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To
Jose Del Valle.
from
Jeremy Bentha

ADVERTISEMENT.

Contained in the present publication are three Papers.

Paper the first, Proposed Petition for JUSTICE, at *full length*.

Paper the second, Proposed Petition for JUSTICE in an *abridged* form.

Paper the third, Proposed Petition for CODIFICATION.

Petition for JUSTICE at *full length*. Parts of it these.

Part I. *Case made:*—Grounds of the hereby proposed application to the House of Commons: inaptitude, to wit, of the existing system of judicial *procedure*, with reference to its alleged and supposed ends, as also of the judicial *establishment* occupied in the application of it: proofs, the several heads and instances of abuse and imperfection, which are accordingly brought and held up to view.

Part II. *Prayer consequent:* — Remedy proposed, for the disorder composed of those same abuses and imperfections.

Prayer, its parts,—

Part 1. Outline of the proposed *judicial establishment*.

Part 2. Outline of the proposed system of *procedure*. Model, the *domestic* system: that, to wit, which is pursued of course by every intelligent father of a family, without any such idea as that of its constituting the matter of an art or science: sole difference the necessary enlargement and diversification, correspondent to the difference in magnitude between the two theatres.

II. Petition for JUSTICE in an *abridged* form. Parts of it these.

Part I. Abridgment of the *case* part of the full-length Petition.

Part II. *Prayer* part. Matter of it the same, word for word, as that of the full-length Petition: reference accordingly sufficient; repetition, needless.

Reasons for the two different forms, these:

1. In the full length Petition, number of the pages, as will be seen 207. Cumbrous would an instrument of this length be, if presented in the only *form* in which it would be received,—cumbrous, and *that* to such a degree, that its bulk might of itself be found an insurmountable obstacle to its being carried about for signature. This form is—that of a roll of parchment, com-

posed of skins tacked on, one to another; length, whatever is necessary for receiving the signatures, in addition to the matter of the Petition.

2. Compared with that of the abridged instrument, the expense of the operation of engrossing would of itself be a serious obstacle.

3. *Readers* in greater numbers—*readers* and thence *signers*, may of course be expected for the shorter than for the longer instrument: to each reader the two will here present themselves for choice.

For *reading*, the instrument presented to a person looked to as disposed to promote the design, will be of course a printed copy of this work. In this way it is perusable by any number of persons at the same time; while, if there was no other copy than the above mentioned roll, years might elapse before this instrument could pass through the number of hands in succession, to each of whom a single day might suffice for the perusal of a copy of it.

III. Petition for CODIFICATION. Intimately connected is the subject matter of this Petition with that of the Petition for *Justice*. No otherwise than by codification can the reform here prayed for—or any effectual reform in any shape—be carried into effect. A Petition, in the terms here seen, having been honoured by the approbation of

Mr O'Connell, has by that gentleman, as a letter of his informs the author of these papers, been put into the hands of the *Catholic Association* for the purpose of its being circulated for signatures.

Of this publication—the ultimate object being the engaging Parliament to take into consideration the subject matter of it, the immediate and instrumental object is, the engaging individuals to concur, by their signatures, in the endeavour to induce Parliament to take the desired course.

Persons looked to for signatures, who? Answer: Every person, in whose breast any such desire has place as that of seeing made, in relation to any subject matter touched upon by it, any change not looked for by him from any other source: any change whatsoever, be the complexion of it ever so different from, or ever so opposite to, that of the change here proposed.

What? (says somebody), co-operation expected from persons entertaining desires directly opposite? Yes, even from them. How so? Because, supposing Parliament taking the matter into consideration,—to each person, for the seeing such his own desires gratified, would thus be afforded a chance, such as he would not possess otherwise.

But if, at the hands even of persons entertaining opposite views and wishes, such co-operation may not unreasonably be expected, with how much

stronger assurance it may be expected at the hands of persons whose views and wishes are more or less in accordance with what is here endeavoured at.

Now as to the ground of expectation in regard to Parliament. This is the distinctive character of the present work, presenting, as it does, in addition to the statement, and that an all-comprehensive one, of the alleged *disorder*, a proposed *remedy*. So far as regards the mere disorder, the work is an operation, an easier than which could not easily be found: at no time can any hand be incompetent to it. While, in any such task, as that of the exhibition of a remedy so much as approaching to co-extensiveness with the disorder, no ground appears for supposing any other hand at present engaged,—or, without invitation, likely in any way to engage.

This or none, such alone is the option presented to every person on whose part any disposition has place to employ his signature in applying to the disorder its sole possible remedy. To wait till a draught to this extent presented itself to no part of which he saw anything to object, would be to wait till the end of time!

In regard to codification, included in the object of this publication, is, it will be seen, not only the presenting to view the fruit of the author's own labours, but the engaging other candidates in the

greatest number obtainable in the same, so supremely and all-comprehensively important, service.

Nor to this purpose is the same sanction of authority altogether wanting. By implication at any rate, codification has in its favour the declared opinion, and recommendation of the real property commissioners: witness the questions circulated by them. Sufficiently manifest at any rate is the recommendation, while, in pursuance of their labours, something should be done. But by Parliament, whatever it be, either by codification or not at all, will it have been done: and whatever be the length to which this indispensable operation has been carried—why it should stop there or any where short of completion, is a question to which it rests with any declared opponent of codification to find, if it be in his power, anything like a rational answer: by his refusal to answer it, or his silence, in relation to it, judgment of inconsistency against him will be signed.

These things considered, requisite assurances are not wanting, that as soon as the press of more urgent business admits, the matter of both petitions will, by appropriate motions, be brought to the view of the Honourable House.

Instructions as to the mode of proceeding for obtaining signatures.

Provide a skin of parchment, tack to it one after another others in sufficient number to contain the matter of the petition, with the addition of signatures in such number as you expect to obtain for it. A thing desirable is, that all persons who join in the petition may be distinguished, each one from any other: for this purpose, let each subscriber add to his name at length an indication of the place of his abode. If it be where there is a town, the name of the county and the parish will be the proper mode of designation: if in a town, the name of the town, with that of the street or other mode of address, employed in sending a letter by the *post*. To save bulk and expense,—divide the roll into parallel columns, each of them wide enough to receive a signature of an average length, in which case, when it exceeds that length, two lines will always be necessary, though commonly sufficient. To each signature prefix a number expressive of the order in which it stands.

As to the instrument thus employed—in general, if not exclusively—it will be the *abridged* petition: the *full-length* petition being much too large, and the transcription of it too expensive, for general use. To any person disposed to use his endeavours to obtain signatures for the longer petition, should it present itself as being too long, an easy operation it will be to strike out of it such

parts as, it seems to him, can best be spared. Where any *abridged* petition is the one employed —in this case, a copy of the petition at length, as printed, should be left with the person applied to, that he may peruse it, if so inclined, before the roll is put into his hands for signature.

Of the opposition which every such coadjutor has reason to expect, it is material that he should be sufficiently aware. From all persons to whom any change in the existing system would be an object of regret, such is the reception which should of course be looked for and provided against: and in this number are included of course all those by whom, to any amount, in any shape, in any way, direct or indirect, profit is derived, or thought by them to be derived, from any abuse or imperfection, to which, by the proposed draught, a remedy is endeavoured to be applied: more particularly all attornies or solicitors, as of late years they have been called, and persons specially connected with them by any tie of interest or relationship, not to speak of judges, other persons belonging to the judicial establishment, and barristers.

Nor as to the whole class, and its several ramifications, let it ever be out of mind, that, on their own principles, by their own shewing, being incontestably interested, they are, one and all, in

relation to this matter, not to speak of so many other matters, to use their own language, so many incompetent, incredible, and altogether inadmissible witnesses.

Of this publication one natural effect is the producing addresses, in one way or other, to the author, from correspondents, to the number of whom no certain limits can be predicted, and which, if precautions were not taken, might be such as to be oppressive. For, so it is, that whatever probability there may be of the presentation of *petitions*, or though it were no more than a single petition, in the course of the present session, the like probability may continue during an indefinite length of ulterior time: but for the arrangement thus requested, this publication might therefore have for one of its effects the imposing upon the author a charge to an indefinite amount, and not terminating but with his life.

On this account it is requested that no communication be addressed to the author but through the medium of the bookseller: nor to the bookseller, but either post paid, or accompanied with an order for a copy of the work.

Lastly, as to the usefulness of this production, and the endurance of which it is susceptible. To those whom the design may be fortunate enough to number amongst its well-wishers, and the pro-

duction among its approvers, a consideration that cannot fail to be more or less agreeable, is—that, whatsoever may be its capacity for attracting signatures, the same may remain to it during an indefinite length of time: and that, so long as the remembrance of this publication lasts, no one to whom the existing self-stiled instrument of security is a source and instrument—of depredation, of oppression, in a word, of *injury* in any shape, can be in want of a ready vehicle for the communication of his complaints.

PETITION FOR JUSTICE.

To the Honorable the House of Commons in Parliament assembled.

JUSTICE! justice! accessible justice! Justice, not for the few alone, but for all! No longer nominal, but at length real justice! In these few words stands expressed the sum and substance of the humble petition, which we, the undersigned, in behalf of ourselves and all other his Majesty's long-suffering subjects, now at length have become emboldened to address to the Honorable House.

At present, to all men, justice, or what goes by that name, is either denied or sold; denied to the immense many—sold to the favoured few; nor to these, but at an extensively ruinous price. Such is the *grievance*.

As to the cause, it is undeniable. Power to judges to pay themselves—to pay themselves what they please, so it be at the expense of suitors.

The denial and the sale follow of necessity. Be the pay in each instance but a farthing, to all that cannot pay the farthing, justice is denied; to all those who can and do pay the farthing, sold.

And the persons on whom alone this burthen is imposed, who are they? Who, but the very persons, who alone, were the exemption possible, should be exempted—altogether exempted from it. Distinguished from all other persons are suitors, by the *vexation* which, as such, they endure. The security, whatever it be, which, by this vexation, these so dearly pay for, all others enjoy without it; and on each man, the greater the vexation in other shapes, the higher (it will be seen) is the tax; for the longer, and thence the more vexatious, the suit, the more numerous are the occasions on which payment of this species of tax comes to be exacted.

What if this faculty of setting, in the same way, their own price upon their own service, were given—(and why might it not as well be given?)—to functionaries in other departments?—say, for example, the military. The business of military functionaries is to give security against external, of judiciary functionaries against internal adversaries. What if to the army power were given to exact whatever contributions it pleased, so it were from those alone who had been sufferers from hostile inroads? By those military functionaries this power has not ever been received; by judiciary functionaries it not only has been received, but, to this day, continues to be exercised.

The tax called *ship-money* found a Hampden to oppose it; to oppose it at the expense, first of his money, then of his life. Neither in its principle was that same *ship-money* so absurd, nor in its worst natural consequences would it have been, by a vast amount, so mischievous, as this *justice-money*, for so, with not less propriety, might it be

called. *Ship-money* produced its Hampden: the Hampden for *justice-money* is yet to seek.

Taxes, imposed on suitors at the instance of ministers were bad enough; but they are not, by a great deal, so bad as those imposed by judges. Ministers cannot, without the sanction of Parliament, give increase to taxes imposed at their instance. Judges can, and do give increase, at pleasure, to taxes imposed for their own emolument, by themselves.

Out of our torments they extract their own comfort; and in the way in which they proceed, for each particle of comfort extracted for themselves, they, of necessity, heap an unmeasurable load of torment upon us. By every fee imposed, men, in countless multitudes, are, for want of money to commence or carry on a suit, deprived of rights to any amount, and left to suffer, without redress, wrongs to any amount: others made to suffer at the hands of judges, for want of the money necessary to enable them to defend themselves against unjust suits.

In all other cases, the presumption is, that, if left to himself, man will, upon each occasion, sacrifice to his own, every other interest; and upon this supposition are all laws grounded: what is there in irresistible power, wrapt in impunity, that should make it—what is there in an English judge that should make him—an exception to this rule?

Such being the grievance, and such the cause of it, now as to the remedy. *The cause* we said, for shortness; *the causes*, we should have said, for there is a chain of them; nor till the whole chain has been brought to view can any tolerably adequate conception be entertained of the sole

effectual remedy—the natural substituted to the existing technical system of procedure. Cause of the oppositeness of the system to the ends of justice, the sinister interest on the part of the judges, with whom it originated. Cause of this sinister interest, the mode of their remuneration: instead of salary paid by government, fees exacted from suitors. Cause of this mode of remuneration, want of settled revenue in a pecuniary shape: for military and other purposes, personal service rendered to government, being paid for, not in money but in land. Cause of this mode of payment, rude state of society in these early times.

But for the Norman conquest, no such sinister interest, in conjunction with the power of giving effect to it, would have had place. At the time of that disastrous revolution, the local field of judicature was found divided into small districts, each with its appropriate judicatory; still remaining, with small parcels, or faint shades of the power, are the denominations of those judicatories, county courts, for example, hundred courts, courts leet, courts-baron. In each such district, in the powers of judicature, sharers (in form and extent not exactly known) the whole body of the freeholders. Form of procedure, the natural, the domestic; natural—that is to say, clear of all those forms by which the existing system—product of sinister *art*, and thence so appositely termed the *technical*—stands distinguished from it: forms, all of them subservient, of course, to the ends of judicature; all of them opposite, as will be seen, to the ends of justice.

Let not any such charge as that of unwarrantable presumption attach on the views, which we,

your petitioners, venture thus respectfully to submit to the Honorable House. Be the occasion what it may,—when by numerous and promiscuous multitudes, expression is given to the same opinions, as well as to the same wishes, unavoidably different are the sources from which those opinions and those wishes are derived: in some reflection made by themselves; in others, confidence reposed in associates. Among those in whom, on the present occasion, the necessary confidence is reposed, are those, the whole adult part of whose lives the study of the subject has found devoted to it.

History and description will now proceed hand-in-hand. As it was in the beginning, so is it now. How things are will be seen by its being seen how they came to be so. To the arrangements, by which the existing system has been rendered thus adverse to the ends of justice, will be given the denomination of *devices:* devices, having for their purposes the above mentioned actual ends of judicature: and under the head of each device, in such order as circumstances may in each instance appear to require, the attention of the Honorable House is solicited for the considerations following—1. Mischievousness of the device to the public in respect of the adverseness of the arrangement to the ends of justice.

2. Subserviency of the device to the purposes of the authors—that is to say, the judges, and other, partakers with them in the sinister interests.

3. Impossibility that this adverseness and this subserviency should not have been seen by the authors.

4. Impossibility, after this exposure, that that same adverseness should not now be seen by those to whom the device is a source of profit.

5. Incidentally, originally-established apt arrangements, superseded and excluded by the device.

The ends of justice—we must unavoidably *remind*, (we will not say *inform*) the Honorable House—the ends of justice are,—1. The giving execution and effect to the rule of action; this the main end: 2. The doing so with the least expense, delay, and vexation possible; the collateral end.

In the main end require to be distinguished two branches: 1. Exclusion of *misdecision:* 2. Exclusion of *non-decision*. Non-decision is either from *non-demand* or *after demand*. The first case is that of simple denial of justice: the other case is that of denial of justice, aggravated by treachery and depredation to the amount of the expense: of the collateral end, the three branches, delay, expense, and vexation, have been already mentioned.

To these same ends of justice, correspondent and opposite will be seen to be the ends—the originally and still pursued actual ends—of judicature: from past misdecision, comes succeeding uncertainty; from the uncertainty, litigation: from the litigation, under the existing fee-gathering system, judge's profit: from the expense, in the more immediate way, that same sinister profit: from the delay, increase to expense and thence to that same profit: from the expense and the delay vexation: this not indeed the purposed but the unheeded and thence recklessly increased result. Of the non-decision and the delay, ease at the expense of duty will moreover, in vast proportion, be seen to be the intended, and but too successfully cultivated, fruit.

Manner, in which this mode of payment took place, this. Originally, king officiated not only as

commander-in-chief, but as judge. From this reality came the still existing fiction, which places him on his own bench in Westminster-hall, present at every cause.

At the early period in question, in the instruments still extant under the name of *writs*, king addresses himself to judge and says, "These people are troublesome to me with their noise: see what is the matter with them and quiet them—*ne amplius clamorum audiamus.*"

Thus far explicitly and in words. Implication added a postscript: "This will be some trouble to you; but the labourer is worthy of his hire."

Nothing better could judge have wished for. All mankind to whom, and all by whom injury had been done or supposed to be done, were thus placed at his mercy: upon the use of his power, he had but to put what price he pleased. To every one who regarded himself as injured, his assistance was indispensable: and proportioned to plaintiff's assurance of getting back from defendant the price of such assistance, would be his (the plaintiff's) readiness to part with it. To the defendant, permission to defend himself was not less indispensable. As to pay, all the judge had to choose was between high fees and low fees. High fees left at any rate most ease; but the higher they were, the less numerous: the lower, the more numerous the hands by which they could be paid. Thus it was that, by kings, what was called justice, was administered at next to no expense to themselves, the only person, by whom the burthen was borne, being the already afflicted. Bad enough this; but in France it was still worse. Independently of the taxes, imposed under that name directly, on the proceedings, profit by sale of the power of exacting

the judge's fees, was made a source of revenue: and hence, instead of four benches with one judge, or at most four or five judges on a bench, arose all over the country large assembly rooms full of judges, under the name of *Parliaments*.

Of the *devices* to which we shall now intreat the attention of the Honourable House, the following are the results:—

I. Parties excluded from judges' presence.
II. Language rendered unintelligible.
III. Written instruments, where worse than useless, necessitated.
IV. Mendacity licensed, rewarded, necessitated, and by judge himself practised.
V. Oaths, for the establishment of the mendacity, necessitated.
VI. Delay in groundless and boundless lengths, established.
VII. Precipitation necessitated.
VIII. Blind fixation of times for judicial operations.
IX. Mechanical, substituted to mental judicature.
X. Mischievous transference and bandying of suits.
XI. Decision on grounds avowedly foreign to the merits.
XII. Juries subdued and subjugated.
XIII. Jurisdiction, where it should be entire, split and spliced.
XIV. Result of the fissure—groundless arrests for debt.

Explanations (we are sensible) are requisite: explanations follow.

I.—*Device the first. Parties excluded from judges' presence.* Demandant not admitted to state his demand; nor defendant his defence: admitted then only, when and because they cannot be shut out: admitted, just as strangers are: admitted without the power of acting for themselves.

In this device may be seen the *hinge*, on which all the others turn: in every other, an instrument for giving either existence or effect, or continuance to this indispensable one.

Only by indirect means could an arrangement so glaringly adverse to the ends of justice have been established: these means (it will be seen), were the *unintelligible* language and the *written pleadings*.

At the very outset of the business, the door shut against the best evidence: evidence in the best form, from the best sources. No light let in, but through a combination of mediums, by which some rays would be absorbed, others refracted and distorted.

No information let in but through the hands of middle men, whose interest it is that redress should be as expensive, and for the sake of their share in the expense, as tardy as possible.

For what purpose, but the production of deception by exclusion put upon truth, and admission given to falsehood, could any such arrangement have been so much as imagined?

For terminating a dispute in a family, was ever father mad enough to betake himself to any such course? Better ground for a commission of lunacy would not be desired; no, not by any one of the judges, by whom the profit from this device is so largely reaped.

Upon each occasion, the father's wish is to come

at the truth: to come at it, whatever be the purpose: giving right, giving reward, administering compensation or administering punishment. The father's wish is to come at the truth: and the judge's wish—what else ought it to be? For coming at the truth, the means the father employs are the promptest as well as surest in his power: what less effectual means should be those employed by the judge?

Forget not here to observe how necessary the thus inhibited interview is to the ends of justice—how necessary accordingly the prevention of it to the actual ends of judicature.

Where the parties are at once allowed and obliged, each, at the earliest point of time, to appear in the presence of the judge, and eventually of each other; where this is the case (and in small debt courts it is the case), the demandant of course brings to view every fact and every evidence that in his view makes for his interest: and the defendant, on his first appearance, does the like. If the demand has been admitted, demandant applies himself to the extraction of admission from defendant, defendant from demandant. Original demands—cross demands—demands on the one side—demands on the other side—relevant facts on one side—relevant facts on the other side—evidence on the one side—evidence on the other side—all these grounds for decision are thus at the earliest point of time brought to the view of the judge; and, by anticipation, a picture of whatsoever, if anything, remains of the suit, pourtrayed in its genuine, most unadulterated, and most instructive colours.

Of the goodness or badness of each suitor's cause, of the correctness or incorrectness of his statements, all such evidence is presented to the

judge's view, as it is in the nature of *oral* discourse, gesture, and deportment, to afford.

As to *mendacity*, say, in the language of reproach, *lying*, licence for it could no more be granted to a party, in this supposed state of things, than to a witness it is in the existing state of things.

Continue the supposition. For the truth of whatever is said, every man by whom it is said is responsible. From the very first, being in the presence, he is in the power of the judge. Moreover, for continuing such his responsibility as long as the suit renders it needful, a mode of communication with him may be settled in such sort, that, for the purpose of subsequent operations, every missive, addressed to him in that mode, may, unless the contrary be proved, be acted upon as if duly received.

In the judicatory of a justice of peace, acting singly, and in a small debt court, conducted in this way, many and many a suit is ended almost as soon as begun: many a suit, which, in a common-law court, would have absorbed pounds by hundreds, and time by years; and, after that, or without that, in an *equity court*, pounds by thousands, and time by tens of years; as often as, upon the demandant's own showing, the demand is groundless, to him, who, under the present system, would be defendant, all the expense, all the vexation, attached to that calamitous situation, would be saved.

To go back to the primeval period, which gave rise to this device, where, in a countless swarm, fee-fed assistants and they alone had to do the business with their partner in trade, the fee-fed judge, the reverse of this took place; and conti-

nues to have place of course. Everything was and is kept back as long as possible: operation was and is made to follow operation—instrument, instrument—that each operation and each instrument may have its fees. On the one hand, *notices*, rendered as expensive as possible, are sent for the purpose of their not being received: on the other hand, notices that have been received, the receipt is left unacknowledged or even denied, and in either case assumed not to have place.

True it is, states of things there are, in which, either at the outset, or at this or that time thereafter, neither in the instance of both parties, nor even of either party, can the appearance in question have place. For a time longer or shorter, by distance, or by infirmity, bodily or mental, a party may stand debarred altogether from making his appearance before the judge; or, though appearing, the aid of an apt assistant may be necessary to him. When the party interested is a body corporate, or other numerous class, composed of individuals assignable or unassignable, of agents, and other trustees of all sorts, the attendance may, at the outset or at some later period, be necessary, with or without that of their respective parties.

But, whatever be the best course, the impracticability of it, in one instance, is it a reason for not pursuing it, as far as practicable, in any other?

Under the system in its present state, certain sorts of suits there are, to which the exclusion does not apply itself. What are they? They are suits in which, if thus far justice were not admitted, the exclusionists might themselves be sufferers: suits for murder, theft, robbery, house-breaking, and so forth. Judges, whether they have bowels or no, have bodies: judges have houses and goods.

A year or two at common-law, ten or twenty years in equity, would be too long to wait, before the criminal could be apprehended. But, that purpose accomplished, off flies justice: six months or twelve months, as it may happen, the accused lies in jail, if guilty; just so long does he, if innocent. But, of this, under the head of *Delays*.

But (says somebody) why say *excluded?* When, in any one of these courts, a suitor makes his appearance, is the door of the court shut against him? Did no instance ever happen, of a suitor standing up in court, and addressing himself to the judge? Oh, yes: once in a term or so; scarce oftener. And why not oftener? Even because, as every man sees, nothing better than vexation is to be got by it. And, if at any, at what period can this be? Not at the outset: not till the suit has run out an indefinite part of its destined length: the judge being in by far the greatest number of individual suits, from first to last, invisible: nor yet an invisible agent, but an invisible *non-agent:* mechanical, as will be explained; mechanical from the outset being the mode, to a truly admirable length, substituted to mental judicature. But suppose the unhappy outcast in court, proceedings, by the devices that will now immediately be explained—proceedings, and even language, have been rendered (he finds) unintelligible to him. Even if he has counsel, of whom, besides one for use, he must have at least one, and may be made to have half-a-dozen for show; if, though it be but one of them has opened his mouth, the mouth of the unhappy client is not indirectly as above, but directly, and with the most shameless effrontery, inexorably closed. The one in whom all his con-

fidence is reposed, may, by treachery or negligence, or craving for greater gain elsewhere, have forfeited it. Three hundred guineas have been given with a brief, the fee left unearned, and restitution refused. If, in such circumstances, a counsel though it be one who, not expecting to be needed is unprepared, has but opened his lips; *no* (says the judge), counsel has spoken for you, you shall not speak for yourself. A plaintiff, had he ever such full license to speak, could he compel the appearance of a defendant? Not he, indeed. If both were in court together, by accident, could either compel answer to a question put to the other? As little.

II. *Device the second.—Language rendered unintelligible.*—It was by this device that, in the first instance, the exclusion was effected.

To Saxon judicature succeeded that of Norman conquerors: to Saxon liberalism, Norman absolutism. In Saxon times reigned, in adequate number, local judicatories: not only county-shires, but, so to speak, still lesser judge-shires: hundred courts, courts leet, courts baron, and others.

Then and there, people or lawyers made no difference; language was the same. From the presence of the judge, in any one of these small and adequately numerous tribunals, directly or indirectly, was suitor ever excluded? No more than in a private family, contending children from the presence of their fathers.

Under the Norman kings grew up Norman French speaking lawyers. Whether in the metropolis or elsewhere, along with his horses and their grooms, one train of these domestics was always in attendance about the person of the king. To this

train was given the cognizance of all such suits as, from such varied distances, so various and some of them so long, could be made to come to it.

Quartering himself upon vassal after vassal, the king was perpetually on the move: in his train moved a judge or judges.

To this train, whatever part of the country he had to come from, every man, who had anything to complain of, had to add himself. To the place, wherever it was, that the train happened to be at, the defendant had to be dragged. When there, these same suitors there found a judge or judges, who, speaking a different language, could not, or would not, understand what they said.

The language of the Normandy-bred lawyers was a sort of French. The language of the country from whence they came, these lawyers spoke: the language of the country into which they were come, they disdained to speak. The rules, such as they were, by which the procedure of these foreign despots, in so far as memory served, and self-regarding interest permitted, could be guided, would of course be such as their own language gave expression to: rules which, as well as the rest of the language, were, to the vast majority of the suitors, unintelligible: meaning by suitors, on this occasion, not only those who were actually so, but those who, but for this obstacle, would have been, but could not be so. *Justiciables* they are called in French. In British India this state of things may, with a particular degree of facility be conceivable.

Here then by a plaintiff, if he would have his demand attended to, by a defendant if he could be admitted to contest it—here were two sorts and sets of helpmates to be hired; interpreters to convey what passed between parties and their advocates,

and between witnesses and judge; and advocates to plead the cause on both sides.

Between advocates and judges the connection was most intimate. Like robbers acting together in gangs and without licence,—these licenced, irresistible, and unpunishable depredators, linked together by one common interest, acted as *brothers*, and stiled one another by that name.

Thus circumstanced, they had but to take measure of the disposable property of the suitors, and divide it among one another, as they could agree.

In and by this confederacy, in a language, intelligible seldom to both parties, most commonly to neither; or, what was worse, to one alone, was the matter talked over and settled. As to the truth of what was said, how much was true, how much false, was not worth thinking about; means of ascertaining it there were none. Parties while exhausting themselves in fees, either looked on and stared, or seeing that by attendance nothing was to be got but vexation, staid away. At an early period minutes of these conversations came to be taken by authority, and continued so to be till the end of the reign of Henry the VIIIth, Ao. 1546, from which time under the auspices of chance, they have been continued down to the present. Under the name of the *Year-books*, from the commencement of the reign of Edward the Ist, Ao. 1272,, they are, in greater or less proportion, extant in print, having been printed, Ao. 1678.

By this one all-powerful judicatory (*metropolitan* it might have been stiled, had the place of it been fixed), by this one great French-speaking judicatory, the little local English-speaking judicatories were swallowed up. Remains to be shown how this was managed.

A suit, from which, if given *for* him, a man saw he should reap no benefit, would not be commenced by him. When, in a local judicatory, in which the plaintiff's demand being so clearly just, the defendant would have been sure to lose, a suit was depending, the judges on each occasion, at the instance of the defendant, sent to the, howsoever distant, judicatory an order to proceed no further, and to the defendant an order to come and, along with the plaintiff, add himself to the train, as above. This having been made the practice and been extensively felt and universally seen to be so; thus, all over the kingdom was an end put to the business of all these English-speaking and justice-administering judicatories.

If a man, who was rich enough, beheld within the jurisdiction of one of those judicatories, another whom, by enmity or any other cause, he was disposed to ruin, all he had to do was to commence a suit either in the great travelling judicatory, or in the first instance in the little first judicatory, and thence call it up into this all-devouring one.

Appeal, on such occasions, does good service; this practice (*evocation*, in French, it is called) was, anybody may see to how great a degree, an improvement upon it.

If, from all these judgeshires, howsoever denominated and empowered—county courts, hundred courts, courts leet and courts baron,—appeals had been receivable, this would have done much, but this would not have done every thing. Some indeed would have passed through the strainer, and yielded fees. But by far the greater part would have stuck by the way, and have thus been useless. Upon the vulgar modes of appeal, evocation was no small improvement. On an appeal,

misdecision on the part of the inferior authority, required to be proved. Presumption is shorter than proof. By an evocation this presumption was regularly made, and being made, acted upon.

III.—*Device the Third.*—*Written instruments, where worse than useless, necessitated.*

So far from being worse than useless, indispensable to perfect judicature is the art of writing, in so far as properly applied. Properly applied it is to three things; instrument of demand under the appropriate heads; instrument of defence under appropriate heads; and on both sides *evidence*. To no one of these three heads belong the so much worse than useless written instruments, stiled *pleadings*. Behold, in the first place, the use and demand there was for instruments of this sort; meaning always with reference to the sinister interests of Judge and Co., then afterwards their particular nature.

By the unintelligibility given to the language, absolutely considered, not inconsiderable was the profit gained; comparatively speaking, relation had to what could be done, and was done accordingly, very little.

Of the French language, the usefulness to Judge and Co., was wearing out. Not to speak of amicable and commercial intercourse, *war* was, ever and anon, sending Englishmen into France, lower and higher orders together, by tens of thousands at a time. Under Edward the IIIrd, a hundred thousand at one time made that fruitless visit to the walls of Paris.

While the use of the French language was thus spreading itself, so was the art of writing, and with it the use of the Latin language; among the

priesthood it was common; and amongst the earliest lawyers were priests.

Now was come the time for pressing pre-eminently useful art, and not altogether useless erudition, into the service of discourse. Written pleadings were added to oral ones; added, not substituted; prefixt, being interposed between the delivery of the original scraps of parchment, and the debate in court. French the spoken matter, preceded by Latin, and that written; thus was darkness doubled, and difficulty trebled. Of this darkness the Latin part continued, unimpaired by any the faintest ray of light, till towards the middle of the last century. By statute of the 4th of George II, Ao. 1731, the darkness invisible, transfigured into the existing darkness visible.

Contemplating it, the all but failure, Blackstone cannot hold his exultation.

Notice to dishonest men, in general, was then given by the fee-fed judges. Is there any man whose property, or any part of it, you would like to have? Any man you would like to ruin, if you can drop pence with them into my *till*, till they are tired, do what you like, and if they call upon me to help them, stand fast; they shall have their labour for their pains. Or, if you cannot come at them, I will do the thing for you. This was neither cried, nor sung, nor said. But when acts speak, words are needless. Such was the language then, such is the language now.

As to the uses—the advantage obtained through mendacity will be brought to view under the next head: even supposing the line of truth ever so rigidly adhered to, still the advantage could not fail to be considerable. To no inconsiderable extent, incapacity, especially in that rude state

of society, would do the work of sinister art. Only by the capacity of paying on the one part for it, would any bounds be set to the extent to which, without aiming at excess, a rambling story might be spun out on either part.

Even from the first, to the purpose of giving the proposed defendant to understand he was expected to make his appearance, on a certain day, at a certain place, on pain that should follow, was applied (it should seem), a scrap of parchment (paper as yet unknown), with a scrap of writing written upon it. Of the writing, *Latin* was the language; by anything so vulgar as the conquered language, conquerors disdained to sully hands, lips, or ears. It was between this *writ* (so it came afterwards to be called) between this *writ* and the *viva voce* discussion that the pleadings were interposed.

On the occasion of each suit, four things there are, to distinguish which clearly from each other was, and still continues to be found a task of no inconsiderable difficulty: these are—1. The service demanded of the judge at the charge of the proposed defendants, say in one word *the demand*: —2. The portion of law on which the demand was grounded: — 3. The individual matter of fact, which, it is alleged, has brought the individual case within the sort of case, for which the provision has been made by the law: —4. The evidence, or say the proof, by which the existence of these same facts was required and expected to be made manifest: not to speak of the *law*, where there not being any really existing portion of law bearing on the sort of case, the existence of a portion of law adapted to the plaintiff's purpose must of necessity be assumed: assumed—that is to say, created

by imagination, in a form, adjusted in some way or other to the demand. Correspondent was the course necessary to be taken on the defendant's side.

As to the *demand*, next to nothing was the information given in relation to it by the *writ*. Remained therefore to be given by the pleadings the particular nature of the service, as above demanded, together with a statement of the *facts*, on which the demand was grounded, with which was chemically combined, a dram of the portion of Common alias Judge-made law, which this same demand took for its ground.

Signal was the service rendered to the inventors by this decree. 1. Spoken words could not be sold at so much a dozen: the written words could be and were; so much for the profit account: 2. Of the word of mouth alterations, not a syllable could be uttered, which the judge did not sit condemned to hear: all labour, without profit: different the case when this preliminary written altercation came to be added: once commenced, then on it went of itself, like a pump set a going by a steam-engine: the judge receiving his share of the profit on it, neither his ears nor his eyes being any part of the time troubled with it: so much for the *ease* account. But of this further, under the head of mechanical *vice* mental judicature.

Yet another use: The additional and so unhappily permanent, served thus as the subject matter and groundwork for the subsequent and evanescent mass of profit yielding surplusage.

By the plaintiff, his story had to be told to a sort of agent called, in process of time, an *attorney*, a word which meant a *substitute:* from this

statement, the attorney had to draw up a *case:* from this *case* an advocate, stiled a *sergeant contour*, afterwards simply sergeant, (originally stiled *apprentices*, barristers were not hatched) had to draw up the pleadings, commencing with that stiled, as above, the *declaration:* attached to each of these learned persons was his clerk; masters and clerks, by each one of them was received his fees.

Father of a family! when you have a dispute to settle between two of your children, do you ever begin by driving them from your presence? do you send them to attorney, special pleader, sergeant, or barrister? Think you that by any such assistance, any better chance would be afforded you for coming at the truth, than by hearing what the parties had to say for themselves?

Page upon page, and process upon process, each process with fees upon fees,—all these for the production of no other effect than what is every day produced all over the country, by a line or two in the shape of a summons or a warrant from a justice of the peace; a hundred-horse steam engine for driving a cork out of a bottle.

"Tell Thomas to come here," or "bring Thomas here:" this is what a father, when his wish is to see his son Thomas, says to his son John. Father of a family, if your power of endurance is equal to the task, wade through this mass of predatory trash, and imagine, if you can, the state your family would be in, if by no one of your children you could ever get anything done, without the utterance of it. Well then: exactly as necessary—exactly as contributive is it to the giving execution and effect to an ordinance of the king in parliament, as it would be to the giving

execution and effect to an order addressed by you, on the most ordinary occasion to any child of your's.

The judge was in a word, a shopkeeper. A spurious article, stampt with the name of *justice*, the commodity he dealt in. By hearing the applicant—the would-be plaintiff in person, nothing was to be got: by serving the scrap of parchment, a fee was to be got: one fee, and that one, like the queen bee, mother of a swarm of others.

To conclude this same subject of written pleadings, and the use of it to lawyercraft. Well might Blackstone thus triumph as above: well might he felicitate himself and his partners in the firm. To his Analysis is subjoined an *Appendix*, in x numbers, the vii. last of which are precedents of, contract or procedure, chiefly procedure, still in use. Numbers vii. divided into sections 22: and, in each of several of the sections, distinct instruments more than one. An exhibition more eminently and inexcusably disgraceful to the head or heart of man, scarcely would it be in the power of reward to bring into existence. Not one of these instances is there, in which, in an honest, intelligible and straitforward way, the purpose might not with facility be accomplished: in not one of them, in any such way is the purpose actually aimed at. In every one of them, the matter of it is a jargon of the vilest kind, composed of a mixture of lies and absurdity in the grossest forms. In maleficence, much worse than simple nonsense. By nonsense, no conception of anything being presented by it to anybody, no deception would have been produced: by this matter, to every *eye* but that of a lawyer, a false conception is pre-

sented; and, in his *mind*, if he be not sufficiently upon his guard against it, will be produced.

Such was the use derived from this invention in its original and most simple state: remain to be brought to view the increments it received, earlier or later, from the other sources above mentioned: from the suborned mendacity—from the established delays, from the groundless nullifications, on grounds avowedly foreign to the merits: and as in process of time, jurisdiction, as will be seen, came to be split, then came the ulterior improvements, introduced by equity, and spirituality: equity and spirituality—those two favorite handmaids of the dæmon of chicane.

IV. *Device the fourth.—Mendacity: licensed, rewarded, necessitated, and by Judge himself practised.*

Of this contrivance, the root will be seen in a distinction taken between *pleadings* and *evidence*. To mendacity in evidence, no allowance is given: to mendacity in pleadings, full allowance. Why not to mendacity in evidence? Because if, to this last stage in the suit, the allowance had been extended, not so much as a shadow of justice would have been kept on foot: society could not have been kept together.

Now, for this same distinction, what ground is there in the nature of the case? Not any. "Thomas Nokes took my horse on such a day" (naming it,)—says I, John Stiles, (the plaintiff) to the judge, make him give me back the horse, or give me its value. In this may be seen the *instrument stated:* first link in the chain of written pleadings—I saw the defendant take the horse, says Matthew Martyr, afterwards, at the trial. This

is called *proof* on *evidence*. Matthew Martyr, if what he thus says is false, is punishable. But if John Stiles, though conscious that the defendant never took the horse, declare that he did take it, and this for the purpose of obtaining the value of it at his charge, why should he be unpunishable? Rational cause for the distinction, none.

On the other hand, for the purpose of depredation under the mask of justice,—the reason—the use—the ingenuity of it is admirable. By taking off the punishment from this stage of the suit, the door was thrown open to every dishonest man who, being rich enough, felt disposed to hire the judge, to enable him, then as now, by means of the costs of suit to accomplish his dishonest purpose. By suffering the punishment to be capable of attaching at the last stage of the suit, no advantage was lost; before the suit had run this length, the defendant's ruin may have been accomplished.

Moreover, if by this or that man in the character of a witness, wilful falsehood comes to have been committed, so much the better: for here, if the purse of the party injured by falsehood not being yet drained, passion has got the better of prudence, here comes another suit: the suit by which the infliction of the punishment is demanded.

The nature of the destruction thus established, behold now the several applications made of it:—the *licence*, or say permission, the *remuneration*, or allowance, and the *compulsion*, all together. By a pre-established harmony, evidenced by usage, the judge stands determined, that, if the defendant, having received, or been supposed to have received, this same *first* link in the chain of *pleadings*, does not, on his part, add to it a *second*, he

the judge, will cause seizure and sale to be made of the defendant's goods; and the proceeds, to the amount in question, delivered to the plaintiff. What the dishonest plaintiff knew from the first was—that for no *lie*, by which he gave, as above, commencement to the suit, would he be punishable: here, then, was the *allowance*, or say *licence:* what he also knew was—that, if the first tissue of lies failed of being, in appointed time, answered by the defendant in correspondently mendacious prescribed form,—he, the dishonest plaintiff, thus rendered so by the judge, by the invitation virtually given to him and every body by this his hired instrument and accomplice,—would receive the contemplated reward for his dishonesty: here, then, comes the remuneration and the compulsion: the remuneration thus given by the judge to the dishonest plaintiff: the compulsion thus applied by the judge to the defendant; and so on through any number of *links* in the chain of pleadings.

Had justice been the end aimed at, would this have been the course? No: but a very different one. No sale of dear bought strips of parchment, befouled by judge's lies. From the very first, no suit commenced but by an interview between the suitor and the judge. No ear would the judge have lent to any person in the character of plaintiff, but on condition, that, in case of mendacity, he should be subjected to punishment, including, in case of damage to an individual, burthen of compensation. Thus, then, vanishes the distinction between *pleadings* and *evidence;* and of the dishonest suits that then were, and now are, born and triumph, a vast proportion would have been killed in embryo. Of whatever, on this occasion, were said by the applicant, not a syllable that

would not be received and set down as *evidence:* received, exactly as if from a stranger to the suit; and so in the case of the defendant. Wherever it were worth while, in the thus written evidence, the now written, and above described unpunishably mendacious, pleadings would have their so uncontrovertibly beneficial substitute.

Now for Mendacity practised.—By mendacity is understood the quality exemplified by any discourses by which wilful falsehood is uttered: habit of mendacity, the habit of uttering such discourse.

Uttered by men at large, wilful falsehood is termed wilful falsehood: uttered by a judge as such, it is termed fiction: understand *judicial fiction.*

Poetical fiction is one thing: judicial fiction, another. Poetical fiction has for its purpose delectation: producing, in an appropriate shape, pleasure: the purpose here a good one, or no other is so. To a bad purpose it is indeed capable of being applied, as discourse in every shape is. But in its general nature, when given for what it is, it is innoxious, and in proportion to the pleasure it affords, beneficent: no deception does it produce, or aim at producing. So much for poetical fiction, now for judicial.

In every instance, it had and has for its purpose, pillage: object, the gaining power; means, deception. It is a portion of wilful falsehood, uttered by a judge, for the purpose of producing deception; and, by that deception, acquiescence or exercise given by him to power not belonging to him by law.

If, by a lie, be understood a wilful falsehood, uttered for an evil purpose, to what species of discourse could it be applied with more indisputable propriety, than to the discourse of a judge, uttered for an evil purpose?

How much to be regretted, that for the designation of the sweet and innocent on the one hand, the caustic and poisonous on the other, the same appellation should be continually in use; it is as if the two substances, sugar and arsenic, were neither of them known by any other name than *sugar!* But the abuse made of this recommendatory word is itself a *device:* an introductory one, stuck upon the principal one.

So much for the delusion, now for the criminality.

Obtaining money by false pretences is a crime: a crime which, except where licensed by public functionaries, or uttered by them, to and for the benefit of one another, is punished with infamous punishment. Power, in so far as obtained by fiction, is power obtained by some false pretence: and what judicial fiction, that was ever uttered, was uttered for any other purpose? What judicial fiction, by which its purpose has been answered, has failed of being productive of this effect?

If obtaining money by false pretences is an immoral practice, can obtaining power by false pretences be anything less so? If silver and gold are to be had the one for the other, so can power and money; if then either has value, has not the other likewise?

If obtaining, or endeavouring to obtain money by false pretences is an act presenting a well-grounded demand for legal punishment, so in its origin, at any rate, was not the act of obtaining,

or endeavouring to obtain, by those same means, power? power, whether in its own shape, or in this, or that other shape?

As to the period—the time at which this device had its commencement in practice can scarcely have been so early as the original period so often mentioned: lies are the instruments rather of weakness, than of strength; they who had all power in their hands, had little need of lies for the obtaining of it.

On every occasion, on which any one of these lies was for the first time uttered and applied to use, persons of two or three distinguishable classes may be seen, to whom, in different shapes, wrong was thus done: the functionary or functionaries, whose power was, by and in proportion to the power thus gained, invaded and diminished: and the people at large, in so far as they became sufferers by the use made of it: which is what, in almost every instance, not to say in every instance, upon examination, they would be seen to be.

In the present instance, functionaries, or say authorities of two classes, are discernible.

The authority, from which the power was thus filched, was either that of the sovereign, their common superordinate—or the co-ordinate authority, viz. that of some judge or judges, co-ordinate with that of the stealers. In a certain way, by the deception thus put upon him, the sovereign was a party wronged, in so far as power was taken from any judge to whom it had by him been given. But this was a wrong little if at all felt: the only wrong felt certainly and in any considerable degree, was that done to another judge or set of judges.

Say *stealing*, or what is equivalent, as being

shorter than to say obtaining under false pretences. In each instance, if deception, and by means of it power-stealing, was not the object of the lie, object it had none; it was an effect without a cause.

By a man in a high situation, a lie told for the purpose of getting what he had already, or could get without difficulty without a lie—such conduct is not in human nature.

As to sufferings, nominal only, as above observed, were they on the part of the supreme and omnipotent functionary; here, supposing them real, no sooner had they been felt, than they would have been made to cease, and no memorial of them would have reached us.

Not so in the case of learned brethren: stealing power from them, was stealing fees. Accordingly, when, towards the close of the seventeenth century, a theft in this shape had been committed, war broke out in Westminster-hall, and fictions, money-snatching lies, were the weapons. But of this under the head of *jurisdiction-splitting*.

There, all the while on his throne sat the king: that king, Charles the IInd. But, to a Charles the IInd, not to speak of a king in the abstract, war between judge and judge for fees, was war between dog and dog for a bone.

Now come the real sufferers—the people. Subjection to arbitrary power is an evil, or nothing is; an evil, and that an all-comprehensive one.

Now, every power thus acquired is in its essence arbitrary; for, if to the purpose of obtaining anything valuable—call it money, call it power—allowance is given to a man, on any occasion, at pleasure, to come out with a lie; which done, the power becomes his, what is it

he cannot do? For where is the occasion on which a lie cannot be told? And, in particular, on the whole expanse of the field of law, no limits being assigned, where is the lie which, if, in his conception, any purpose of his, whatever it be, will be answered by it, may not be told?

Accordingly, wilful falsehoods, more palpably repugnant to truth, were never uttered, than may, by all who choose to see it, be seen to have been uttered, and for the purpose of obtaining power, by English judges.

Take for example the common recovery fiction; a tissue of lies, such, that to convey to a non-lawyer any comprehensive conception of it, would require an indefinite multitude of pages, after the reading of which it would be conceived confusedly or not at all. But what belongs to the present purpose will be as intelligible as it is undeniable.

1. Descriptions of persons stolen from, three. 1. Children, in whose favour a mass of immoveable property had been intended to be made secure against alienation; eventual subject-matter of this property, no less than the soil of all England.

2. Landowners, by whom, by payment of the fees exacted from them, was purchased of the judges of the court in question—the Common Pleas—that power of alienation which they ought to have gratis, or not at all. 3. Professional men, —conveyancers, (the whole fraternity of them) despoiled, in this way of a share of such their business, by the intrusion of these judges.

Now for the falsehood—the artful and shameless predatory falsehood—by which all these exploits were performed. Officiating at all times in the court in which these judges were sitting, was a functionary, styled *the cryer of the court;*

his function, calling individuals, in proportion as their attendance was required, into the presence of the judges. Sole source and means of his subsistence, fees; in magnitude, the aggregate of them correspondent to the nature of his function. Behold now the fiction. A quantity of parchment having been soiled by a compound of absurdities and falsehoods, prepared for the purpose, and fees in proportion received for the same, a decision was by these same judges pronounced, declaring the restriction taken off, and the proprietors so far free to alienate: to the parties respectively despoiled, a pretended equivalent being given, of which presently. Persons whom it was wanted for—(not to speak of persons not yet *in esse*, and in whose instance accordingly disappointment might be prevented from taking place) young persons in existence in indefinite multitudes, from whom, on the several occasions in question, their property, though as yet but in expectancy, was thus taken—taken by these same judges, whose duty it was to secure it to them. Now for the equivalent. To all persons thus circumstanced, it was thought meet to administer satisfaction: it was by a speech to the following effect, that the healing balm was applied. "Children, we take your estate from you, but for the loss of it, you will not be the worse. Here is Mr *Moreland*," (that was always the gentleman's name) "he happens to have an estate of exactly the same value: this we will take from him, and it shall be your's."

Exactly in this way, on one and the same day, were estates in any number disposed of at the appointed price by these supposed, and by suitors intituled, ministers of justice. Such was the proceeding then: and such it continues to this day.

There we have one fiction: now for a parallel to it. Once upon a time, in Fairy land, in the court of a certain judge, under the seat of the crier of the court, was a gold mine. On a touch given to the seat by a wand, kept for the purpose by the judge, out flowed at any time a quantity of gold ready melted, into an appropriate receptacle, and on the turning of a cock, stopt. Here we have a fiction, which, if it be a silly, is at any rate an innocent one. Be it ever so silly, is there any thing in it more palpably repugnant to truth than in that predatory and flagitious one.

Two points, could they be but settled, might here afford to curiosity its aliment.

1. Point the first. Those fictions, such as they are, in what number could they be picked up like toad-stools, in the field of common law! By dozens at any rate, or by scores, to go no further, they might be counted.

Roman lawyers too, have theirs. But for every Rome-bred fiction, a dozen English-bred ones, to speak within compass, might be found.

2. Point the second: birth-day of the fiction —latest hatched and let fly to prey upon the people—Was it the day next before that of the first newspaper? Was it that of the last witch burnt or hanged? Be the species of imposition what it may —be the field of deception what it may, a time there will always be, after which new impostures will not grow on it. But, as to the time when those which have root at present will be weeded out, this question is a very different one.

By the operation here in question, good (will it be said?) good, in a certain shape, was done? good, for example, of the nature of that which it belongs to political economy and constitutional

law to give indication? Be it so. But, be it ever so great, good, considered as actually resulting, is on this occasion, nothing to the purpose: only lest it should be thought to be overlooked, is mention thus made of it: the only good which is to the purpose is the good intended.

Lastly, as to certain ulterior uses of this species of poetry to the reverend and learned poets. Those of the coarsest and most obvious sort—power-stealing and money-stealing—having been already brought to view.

To complete the catalogue, require to be added, —1. Benefit from the double fountain, constituted as above. 2. Benefit from the thickening thus given to confusion.

1. First, as to the double fountain. A juggler there was, and a fountain he had, out of which at command flowed wine, red or white, without mixture. This reality, for such it is, may help to explain one use, and that a universally applying one; the purpose, whatever it be, is it by the truth that it is best served? The argument is drawn from the truth side. Is it by the fiction? Side from which the argument is drawn, the falsehood.

Such being the emblem, now for the application. Be the mess what it may, truth is always the substance of it; lies, how coarse and gross soever, but the *seasoning*. The purpose, whatever it be—is it by the fiction that it is best served? From the fiction side it is that the argument is drawn: is it by the truth alone that the purpose can be served? It is to the truth, with whatsoever reluctance, that recourse is had. Thus *quacunque via data*, as the law Latin phrase has it, the point is gained.

2. Lastly, as to the benefit from the confusion that, proportioned to the extent to which non-con-

ception, or what is so much better, misconception in regard to the rule of action, has place on the part of those who are made to suffer, in proportion to their non-compliance with it, the particular interest of Judge and Co. is served: these are propositions, of which the whole substance of this our humble Petition is one continual proof. That the giving to these two so intimately connected states of things the whole policy of this class of politicians has from first to last been universally directed, is another proposition, to which the same proof applies itself with the same force. But to say that by and in proportion to the degree of confusion that has place in the aggregate mass of ideas produced by the aggregate mass of discourse, expressed in relation to the subject and received, this same purpose is answered, is but to say the same thing in other words.

If, to the intelligibility of that which is here said about unintelligibility, any addition can be made by the sort of imagery so much in request, out of each one of Judge and Co.'s double fountains, rises at all times a thick fog. Say each one for another will be brought to view, namely, under the head of device the eleventh—*Decision on grounds foreign to the merits.*

V.—*Device the fifth. Oaths, for the establishment of the mendacity, necessitated.*

That the ceremony of an oath is the instrument by means of which the licence to commit mendacity is effected, has just been stated. Now as to the mode of applying the instrument to this purpose. Nothing can be more simple. On the occasion of any statement, about to be made, on a juridical occasion, or for an eventually juridical

purpose, is it your wish (you being a judge) that mendacity should *not* have place, you cause the individual by whom the statement is made, to have, just before the making of it, borne his part in this same ceremony: on the occasion of any statement so made, is it your wish that mendacity *should* have place, you abstain from requiring the performance of this same ceremony: and, at the same time, you give to the naked statement so made, whatsoever effect it suits your purpose to give to it.

Not that it was for this purpose that the ceremony itself was invented: for, along with the *time*, the *cause* of its invention is lost in the darkness of the early ages: all that, on this occasion, is meant is—that it is for the purpose of organizing mendacity, and giving to that vice every practicable encrease, that the ceremony, being found already in use, was taken advantage of.

Properties, which we shall now present to the view of the Honourable House this instrument as possessing, are the following: they consist in its being,

1. *Needless;* to wit, for the purpose of repressing mendacity on judicial occasions or for a judicial purpose.

2. *Inefficacious,* on these same occasions.

3. *Mischievous,* to an enormous extent in a variety of ways.

4. *Inconsistent* with the received notions belonging to *natural religion.*

5. *Anti-scriptural.*

6. *Useful to Judge and Co.,* eminently subservient to their particular and sinister interest; and as such cherished by them.

First as to needlessness. For the needlessness

of this ceremony, on the sort of occasion or for the sort of purpose in question, we humbly call to witness your Honourable House: primee in legislation is in effect the part borne by you. In your hands is the public purse: with you, with few and casual exceptions, laws originate. Take any law whatsoever, in the scale of importance what, in comparison with the power of making that same law, is the power of exercising, in relation to it, an act of judicature, reversable of course at pleasure by the powers by which the law was enacted? Well then—when at the instance of the Honourable House a law has been enacted—this same law, was it passed upon determinate grounds, or was it *groundless?* To stile it *groundless*, would be to pass condemnation on it. It having determinate grounds, and those grounds appropriate, of what then are those same grounds composed?

Answer. Of matters of fact, and nothing else; for nothing else is there of which they can be composed. On the occasion in question, these same matters of fact, whatsoever they may be, will respectively either be considered as already sufficiently notorious, or not: if not, then will the existence of them, for the purpose of this same act of legislation, as for the purpose of any act of judicature, be considered as requiring to be established by evidence. No otherwise than in as far as thus grounded and warranted, can any law whatever be anything better than an act of wanton despotism. Most laudable accordingly—unmatched in any other country upon earth, is the scrutinizing attention and perseverance, so constantly employed by your Honourable House, in the collection of appropriate witnesses, and the elicitation of their testimony. Of their testimony? and in what

shape? in that which is the very best possible: *oral* examination, subject to counter-interrogation from all quarters, re-examination at any time, and with the maximum of correctness secured to it by being minuted down as elicited, and subjected afterwards to correction by the individual from whom it emanated. Behold here a mode of proceeding, dictated by a real desire to elicit true, and appropriately complete, information: the desire accompanied with a thorough knowledge of the most effectual means for the accomplishment of it.

Well then. For securing to each article of information thus elicited, the same character of truth at the hands of each witness, putting out of the question the spiritual motive, what are the temporal motives which, in the shape of eventual punishment, in case of mendacity, your Honourable House makes application of? Answer: in a direct shape, imprisonment only; with or without *fine:* in an unimmediate and indirect shape, fine, for the extraction of which the imprisonment is the only instrument.

Now then, as to the ceremony called *swearing*, or *taking an oath*. Whether it be for want of power, whether it be for want of will,—(the single case of election judicature excepted, and *that* no otherwise than in pursuance of a special act of parliament) no use does your Honourable House ever make of this same ceremony. What follows? Does mendacity find the Honourable House impotent? On the contrary: much more effectual is its power against this vice than that of ordinary judicature, with its expensive prosecution and severer punishment. Why? because, while the mode of elicitation employed is such as needs not the assistance of the ceremony, its mode of proce-

dure is such, as is able to cause the punishment to follow instantaneously upon the offence. Yet, has it as yet a weakness, to which consistency will one day, it is hoped, apply the obvious remedy. Standing at the highest pitch at the commencement of each parliament, it sinks, (this indispensable power,) as the parliament advances in age, till, at last, it is sunk in utter decrepitude.

After such a demonstration of the needlessness of this ceremony, but for the importance and novelty of the subject, other proofs might be put aside, as being themselves needless: important the subject may well be stiled, or no other is so: for, so long as this ceremony has place, justice, to the prodigious extent that will be seen, is absolutely incapable of having place.

To the benefit of the testimony of Quakers, ever since the year 1696, justice has, without the benefit of this ceremony, by various statutes, been admitted, in cases called *civil* cases: and now, by a statute of 1828, in cases called *criminal* and *penal* cases. If, then, as a security against mendacity, the ceremony is indispensable in the case of all other men, can it be needless or safely omitted in the case of these?

Moreover, on any one of these occasions, what is there to hinder a non-Quaker from personating a Quaker? Clothed in the habit, and speaking the language of a Quaker, suppose a non-Quaker, by his evidence, giving success to Doe, in a case in which, otherwise, it would have gone to Roe. The imposture afterwards discovered, would success change hands?

On the evidence of an impostor of this sort, suppose a man convicted of murder and executed. The imposture being afterwards discovered, would

the felony be transmuted into a non-felony, and the hanging operation be, in law language, declared void?

Not only in the case of a class of men so well known as this of *Quakers*, but in the case of a class comparatively so little known as that of *Moravians*, has justice been in possession of this same benefit, ever since the year 1749, by statute 22 Geo. II. ch. 30.

Of detriment to justice from this allowance, in what instance was any suspicion ever entertained? Was not the assuredness of the absence of all increased danger of mendacity, from this admission, in *civil* cases,—was not *this* the cause of the extension given to it in criminal cases?

So much for *needlessness*.

2. Now as to *inefficiency*. Considered with reference to the purpose here in question, oaths stand distinguished into *assertory* and *promissory:* but, in both cases, the sanction is precisely the same. Take then, for example, oaths of the *promissory* sort: because these stand clear of various points of contestation, which have place in the case of *assertory* oaths: whereas in the case of a promissory oath, if violation has place, seldom does the fact of the violation stand exposed to doubt.

Now then for the examples. Example the first. Protestant sees in Ireland, bishops 22: archbishops 4: together 26. Previously to investiture, oath taken by every bishop, promising to see that in every parish within his diocese, a school of a certain description shall have place. Of the aggregate of these oaths, what in the year 1825, was the aggregate fruit? Performances 782: perjuries 480. When received and communicated, (so at least says the solemn office)—when received

and communicated, behold the preservative power of the Holy Ghost in these minds against perjury.

Example the second. In England, through the university of Oxford, pass one half of the 12,000 or 13,000 church of England clergy; through the university of Cambridge the other half. In *Oxford*, preeminent in uselessness and frivolousness, a volume of statutes, receives at entrance from each member as in every article of it, a security for observance, an appropriate promissory oath.

Now for the effect. On no day does any one of these academies tread on the pavement of that same holy city, without trampling upon some one or more of these oaths. Held up to the inexorably conniving eyes of the constituted authorities, has been the contempt thus put upon this ceremony,—held up, not by strangers only, but by members—not by lay-members only, but by clerical members:—for more than the last half century, by a clerical member—Vicesimus Knox—in a work, editions of which, in number between 20 and 30 are in circulation.

So much for promissory oaths. To come back to assertory oaths. Stand forward *Custom-house oaths*. For demonstration of the inefficiency—the uncontested and incontestible inefficiency—these two words supersede volumes: exacted to a vast extent the assertion of facts, of which in the nature of things it is not possible that the assertor should have had any knowledge. How prodigious the benefit to finance and trade if *asseveration*, with appropriate punishment in case of mendacity, were substituted, and by adverse interrogation, a defendant made subjectible to a limited loss, as by equity interrogation he is to loss of all he has! Thus simple is the arrangement, by which

without the illusory assistance of the thus universally contemned ceremony, finance might be made to assume a new and healthful face; trade be made to receive changes in great variety, generally regarded as beneficial; and pounds, by hundreds of thousands a year—not to say millions, be saved.

So much for needlessness and inefficaciousness.

3. Now as to *mischievousness*. Of the immense mass of evil constantly flowing from this source, a part, and but a part—has as yet been presented to the view of the Honorable House:—namely, under the last head, the head of *mendacity*.

1. By so simple a process as the declining to act a part in this ceremony,—any man, who has been the sole percipient witness to a crime may, whatever be that crime, murder, or still worse,—after appearing as summoned, give impunity to it: without the trouble or formality, producing thus the effect of pardon: sharing thus with his majesty this branch of the prerogative, and even in cases, in which his said majesty stands debarred from exercising it.

2. By the same easy process, in a case called *civil*, may any man give to any man any estate of any other man.

Not quite so easy, (says somebody.) For would not this be a contempt? and would he not of course be committed?

May be so: But when the murderer has been let off, or the man in the right had lost his cause, would the commitment last for life? In a word what would become of it?

But to no such peril need he expose himself. A process there is which is still easier. "*I am an atheist.*" He need but pronounce these four

words. The pardon is sealed: or Doe's estate is given to Roe.

But of this, more presently.

Behold now perjury established by law: established on the most extensive—established on an all-comprehensive scale: established by impunity, coupled with remuneration altogether irresistible. Such is the effect of *test oaths*. Of these oaths, some are or may be assertory, some promissory, some assertory and promissory in one: declaration of opinions entertained: declaration of course of actions determined to be pursued, or of opinion determined to be entertained: to be entertained, spite of all conviction and persuasion to the contrary. For perjury in this shape, premium the highest given—for good desert in any shape; for appropriate aptitude, in the official situations, the most richly remunerated. Of the whole of the expenditure of government, a vast proportion thus employed in raising annual and continually increasing crops of perjuries; and while such is the reward, impunity is absolute and secure.

Oh the admirable security! A man who, with or without pecuniary reward has, for any number of years together, as above, been leading a life of perjury, is to be regarded—not only as capable, but as almost sure, of being stopt from giving his acceptance to any of the very richest rewards, the king's gift: stopt by the fear of no more than what if anything, may follow from one single instance of perjury, and that a compleatly unpunishable one—made to refuse for example, an archbishoprick of Canterbury, with its 25,000*l.* a year, and its *et cæteras* upon *et cæteras!!!*

Sowing oaths and reaping perjuries is a mode of husbandry, in a particular instance, affected to be

disapproved by Blackstone. But in that instance, compared with this, the scale is that of a garden-pot to that of a field.

Bidding thus high for perjury, is it possible that of the self-same man it should be the sincere wish to prevent it?

What then (says somebody) the fear of punishment at the hands of the Almighty,—is that to be set down as nothing? The answer is, yes; on this particular occasion, as amounting absolutely to nothing: but of this presently.

By the inducting of these same reverend, right reverend, and most reverend, self-styled perjurers, (for so they are specially declared to be by these their own statutes,) has been established the national school of church of England orthodoxy.

These things considered, and the use made of oaths on judicial occasions,—Westminster Hall, not to mention its near neighbourhood, may it not be styled the great *National School* of perjury?

What then (says somebody) are all *tests* meant to be thus condemned? Oh, no; tests, for declarations of the party joined, by a man, on this or that occasion, may be useful: useful, and even necessary; and at any rate unexceptionable: in some cases by acceptance, in other cases by non-acceptance, useful indications may be afforded. On an occasion of this sort, who are they whom you choose to be considered as siding with? This is the question, propounded by the call to join in the declaration; and in this case no mendacity need have place.

4. So much for needlessness, inefficiency, and mischievousness. Now as to repugnance to natural religion.

This supposed punishment for the profanation,

on whom is the infliction of it supposed to depend? On the Almighty? No; but, in the first instance, at any rate, on man alone. No oath tendered, no offence is committed: no offence committed, on no man punishment inflicted. According to the oath-employing theory, man is the master, the Almighty the servant. In respect to the treatment to be given to the supposed liar, the Almighty is not left to his own choice. In the event in question, at the requisition of the human, the divine functionary is made to inflict an extra punishment. Exactly of a piece with the authority exercised by a chief justice of the King's Bench over the sheriff of a county, is the authority there, by every man who has purchased it, pretended to be exercised over the Almighty. In Westminster Hall procedure, the chief justice is the magisterial officer; the sheriff of the county in question a ministerial officer, acting under him: a written instrument, called *a writ*, the medium of communication, through which, to the subordinate, the command of his superordinate is signified.

In the case of the *oath*, the man by whom the oath is administered performs the part of the chief justice; the Almighty that of the sheriff acting under him; and the kiss given to the book performs the service of the writ.

Is it by a country attorney, dignified by the title of master extraordinary in Chancery—is it by this personage that the oath is administered? In this case, it is the attorney that the Almighty has for his master now; and by the shilling paid to the attorney—by this shilling it is that the Almighty is hired.

On the expectation of the addition thus to be

produced to the spiritual punishment appointed by the Almighty of himself for mendacity—on this alone depends the whole of the molehill of advantage, if any such there be, capable of being set against the mountain of evil that has just been brought to view.

Of mendacity, variable is the maleficence, on a scale corresponding to that of the maleficent act, of which it is made, or endeavoured to be made, the instrument: of the profanation of the ceremony, the guilt, if any, is one and the same.

Infinitely diversified in respect of degree of importance, are the purposes to which this instrument, such as it is, is wont to be applied. Does it, in its nature, possess any capacity of being, by its variability in quantity, and thence in form, accommodated to these several purposes? Not any.

The punishment, if any, the infliction of which is expected, is in every instance the same, for which the attorney, for his shilling, draws upon the Almighty. This draught, will it be honoured?

But (says somebody) for binding a man's attention to the importance of the occasion, some mark of distinction between an assertion that *is*, and one that is *not* intended to be legally operative—may it not be of use? Yes, doubtless. But for this purpose, no such preposterous pretended assumption. of authority over the Creator by the creature, is either necessary, or in any degree useful. By the word *asseveration*, the appropriate extraordinary application of the faculty of attention is already sufficiently indicated.

On occasions of the sort in question, in the instance of the people called Quakers, by special allowance from the legislature, already in use is the

word *affirmation*. This word might not improperly serve. But the word *asseveration* is, perhaps, in some degree, preferable; since it presents to view more assuredly than does the word *affirmation*, the idea of a special degree of attention and decision beyond what has place on ordinary and comparatively unimportant occasions.

5. Now, as to repugnancy to Scripture. "Thou shalt not take the name of the Lord thy God in vain." So says the second of the ten commandments. "*Swear not at all.*" These are the words of Jesus, as reported in the gospels: "*Above all things, swear not:*" These are the words of St James, in his Epistle. But for texts of Scripture, when troublesome, there are rules of interpretation: one of them is, the rule of contraries.

Says God to man,—thou shalt not perform any such ceremony. Says man to God—I do perform this ceremony, and thou shalt punish every instance of disregard to it. Suppose the Almighty prepared to punish every or any instance of disregard to this ceremony, you suppose him employed in sanctioning disobedience to his own express commandments.

If, to the compellers of such oaths, punishment, in a life to come, were at all an object of consideration, the punishment attached to disobedience—to commandments thus plain and positive, would produce in their minds an impression rather more efficacious, than what has been seen produced, as above, by the punishment supposed to be attached to a disregard for the purely human and recently invented ceremony.

But, for the use of so useful an instrument of profitable maleficence, no punishment is too great to be encountered. "The punishment" (say they,)

" what matters it? Turning aside from it, we extinguish it."

The thus imagined supernatural punishment, has it really any efficiency in the character of an auxiliary to human punishment, and a security against maleficence in its several shapes? If yes, why thus narrow the benefit producible by it? Why not make out at once a complete list of maleficent acts of all sorts, fit to be, in due form of law, converted into offences? This done, collectively or upon occasion severally, the promissory declaration may be attached to them, and the book kissed.

This done, and not before, consistency will take the place of its opposite; and the practice of swearing, against conviction, cease.

6. So much for needlessness, inefficiency, repugnancy to natural religion, repugnancy to revealed religion, as well as abundancy in mischievousness. Now for use to Judge and Co.—Multifarious and extensive is this use. The capital use, establishment of the mendacity-licence, with the increase given to the profit by written pleadings, keeps pace with the mischievousness of the practice, and has been already brought to view.

But the use of oaths to the partnership does not stop here. The greater the quantity of immorality, in all shapes, but more particularly in that of injustice, the greater the quantity of his profits: for, the more immorality, the more transgressions; the more transgressions, the more suits; the more suits, the more fees. This service presents a *clue*, or say a *key*, which comes to the same thing, to all the arrangements which enter into the composition of judge-made law.

By the confusion with which the field of law

has thus been covered, observance of oaths, or breach of oaths, according as countenanced by a judge, being regarded as a merit and a duty, thus it is that judges have come to be regarded as invested with the power of converting *right* into *wrong*, and *wrong* into *right*: right and wrong following continually the finger (as the phrase is,) of the law.

Decency, as well as that inadequate degree of efficiency which their own particular interest requires to be given to those parts of the law on which personal security depends, join in necessitating, as above, some restraint on mendacity in certain cases: at the same time, their official and professional interest requires that, to a vast extent, that same security should be inefficient. By a compromise between these two antagonising interests has been produced the form of the prosecution for perjury.

Not applying the temporal punishment but in the comparatively small number of instances in which it has been preceded by this ceremony, and the application of it requiring a separate suit, with two witnesses to give effect to it—a suit, of which the expense to the prosecutor is great; and the advantage, in case of success, limited to the few cases in which it has for its effect the reversal of the judgment grounded on the false testimony, they thus make a show, and no more than a show, of wishing to extinguish the vice, to the propagation of which, so far as profitable to them, their endeavours have been so diligently and successfully directed. Bating this rare case, ere any such prosecution can have been instituted, signal must have been the triumph of passion over prudence. Among ten thousand perjuries committed, is there

so much as one punished? For *ten* might have been put a hundred, or for a hundred a thousand.

Built originally for feasting, Westminster-hall is thus become the great national school for perjury.

Picking out men, in whose breasts the aversion to mendacity is strongest and most incontestible—picking out these men, and expelling them from the witness's box, with ignominy stampt on their characters—is another service extracted by Judge and Co. from this ceremony.

In the instance of one half of that order of men, who are so richly paid for professing to impress morality, in all its shapes, upon the conduct of the rest of the community, the universality of habitual perjury has been already brought to view.

One of those suits, which the existing system engenders in such multitudes—a suit in which one of the parties is conscious of being in the wrong, has (suppose) place. One percipient witness there is, whose testimony, were he admitted as a narrating witness, is on good grounds believed by this dishonest suitor to be an atheist. But, atheist as he is, nothing does it happen to him to have, or to be so much as supposed to have, to bias him, and warp his testimony one way or the other: and no man is maleficent without a motive.

Answering to his call, this man places himself in the witness's box. The learned counsel has his instructions. Sir, (says he) do you believe in a God? What follows? Answering falsely, the proposed witness is admitted: he can not be rejected: answering truly, he is silenced, and turned out with ignominy. The martyr to virtue, the martyr to veracity, receives the treatment given to a convicted felon.

The atheist was unseen and silent. These law-

yers drag him into broad daylight, and force into the public mind the poison from this confessing and thus corrupting tongue.

What will not the advocate do—what will not the fee-fed judge support him in doing—for their fees? An inquisition, this high commission court, all over. For the purpose of thus punishing the offence, they create it: themselves accessaries before the fact: themselves suborners.

Individuals they thus invest with the power of pardon—thus do these sworn guardians of the king's prerogative. Individuals? and what individuals? In the first place, these same atheists; in the next place, all Christians and other theists, whom they have succeeded in rendering mendacious enough to pretend to be Atheists.

A murderer (suppose) is on his trial: necessary to his conviction is the testimony of an individual, who has just mounted the box. Before the oath is tendered, "First (may it please your lordship,) let me ask this man a question," says the counsel for the murderer. Thereupon comes the dialogue. Counsel—"Sir! Do you believe in a God?" Proposed witness—"No, sir." Judge—"Away with him; his evidence is inadmissible." Out walk they, arm-in-arm, murderer and atheist together, laughing: murderer, to commit other murders, pregnant with other fees.

Robbers in gangs go about (suppose), and to suppress testimony, murdering all whom they rob, and all who are supposed by them to have seen or to be about to see them rob. On being taken, one of them (suppose) turns king's evidence. Question by prisoner or prisoner's counsel—Do you believe in a God? Answer in the negative: off goes the witness, and off with him goes the prisoner. Will

it be said, that the condition, not having been performed, that is to say, the procurement of the defendant's conviction, the pardon will not be granted, and the accomplice will be hanged? Not he, indeed. No sooner does any one of these murderers enter the witness box, than, by Judge and Co., if not an atheist already, he is thus converted to atheism. The consequence is—the necessary evidence being thus excluded, the virtual pardon of the whole gang—this man along with the rest—takes place of course.

Another use to Judge and Co., from the all-corrupting ceremony: the shilling per oath received for the administration thereof: the shillings in front, with pounds, in many cases, in the back ground. Hence, patronage, with reference to the situations in which this profit is received. Considerations these, by no means to be neglected. What is there that is ever overlooked in the account of fees?

Another case. An instrument in the hand of hypocrisy—an instrument to cajole a jury with—is another character in which the ceremony is of special use to a judge. It forms a charm, by the fence of which, transgression in every shape is rendered impossible to him. Gentlemen of the jury, you are upon your oaths: I am upon mine. Mine calls upon me to do so and so, quoth the ermined hypocrite: out comes thereupon whatever happens to suit his purpose. On any adequately great occasion, appropriate gesture—application of hand to bosom, might give increase to stage effect. Speaking of a noble lord, as having been saying so and so—"My lords," (said a judge once) "he smote that sacred tabernacle of truth, his bosom." Your oath? What oath? Who ever

saw it? Where is it to be seen, unless it be on the back of the roll on which is written the body of your common law? One of three things. Either you never took any such oath at all, or if you did, it was either a nugatory or a maleficent one: a promise, for example, on all occasions to make sacrifice of all other interests to the interest of the ruling one. An old printed book there is, intituled The Book of Oaths: and of one or other of these two descriptions are the several oaths therein stated as taken by judges. At any rate, whatever oath you took, if any, in no one's presence was it taken but that of him by whom it was administered. In what better light, therefore, than that of a fresh act of mendacity and imposture, can any such mention of an oath be ever regarded by a reflecting juryman?

So much for the punishment of mendacity under the existing system. Now suppose a system substituted, having for its ends in view the ends of justice. Great beyond present possibility of conception would be the security which, against fraud and deception would be given, by attaching punishment to mendacity. In whatever instance mendacity had been uttered, either on a judicial occasion or for a judicial purpose, punishment would stand attached to it of course. Against fraud and maleficent deception, to whatsoever purpose endeavoured to be applied, great not only beyond example but beyond conception would be the security thus afforded. Oaths and perjuries abolished, punishment for mendacity would be at liberty to bend itself, and would of course bend itself to the form of every offence, to every modification of which the evil of an offence is susceptible. Judicial is the *occasion*, in so far as it is in

the course of a suit actually commenced, that the assertion is elicited: judicial the *purpose*, that is to say, the eventual purpose, where the assertion is uttered for the purpose of being eventually employed as evidence, should ever a suit have place, on the occasion of which it might serve as evidence.

Take, for instance, a false *recital* in a conveyance, in an engagement meant to be obligatory; false vouchers in accounts.

Thus in the case of a voucher. Receptor in account with creditor, produces from Venditor or from Faber a *voucher*, acknowledging the receipt of a sum of money for goods furnished to Receptor, to be employed in the service of Creditor. In fact, he has received no more than half the sum: the other half being undue profit divided between them. Under the existing system, on evidence in no better shape, are accounts audited: evidence received as conclusive, the mere production of a receipt. To creditor in this case what difference does it make whether it be by a forged receipt that he is defrauded of this money, or by a falsely asserting, though genuine receipt, as above? Yes, for no such false assertion is there any punishment appointed under the name of punishment: under the name of satisfaction, refunding of the undue profit, yes. But for this a suit in Equity is necessary; a suit in which, for the recovery of five shillings, at the end of five years, or in case of appeal ten years, creditors may have to advance 500*l.* or 1000*l.*, losing in case of success a fourth part of the money in unallowed costs. On no better security against fraud than this have public accountants received discharges for hundreds of millions of pounds.

On the ground of any such *voucher*, any such *Venditor* or *Faber* might be made examinable at any time, and in case of original fraud, as above, or false asseveration in the course of the examination, punishable according to the quality and quantity of the wrong.

Fraudulently or otherwise mendaciously false recital in conveyances, in engagements meant to be obligatory, (including contracts)—falsehood in the recitals of instruments, in which registration of obligatory dealings of either of those two classes is performed, newspaper or other paper under false denominations, printed and circulated for the purpose of influencing the prices of public securities—all these vehicles of falsehood would thus receive a mode and degree of repression at present unexampled and until now unconceived.

Thus intimate is the connection between legalized swearing and fraud: in a word, as has been seen, between this compulsorily and irresistibly legalized vice, and crime and immorality in every imaginable shape: with lawyer's profit from every imaginable source.

Swear not at all! Cease to take the name of the Lord in vain—by these commandments, repeated every day at table, with or without the grace before meat in every house,—more would be done towards the extinction of crime and immorality, than would ever be done by preaching, though every house were to have a pulpit in it.

How long will men continue to seek to cause God to apply a punishment he had no intention of applying? To cause him, say rather to *force* him, leaving only the time and the quantum to his choice? For, on the ceremony performed the everlasting punishment is assumed to follow as a thing of course.

When will legislators and judges cease to be suborners of perjury? Of perjury on an all-comprehensive scale?

The passion for these universal oaths, and (which is the same thing) for perjuries, can there be no means of administering to its gratification without the boundless expenditure of crime, immorality, and consequent misery? If without the special and specific mischief produced in so many shapes as above, simple oaths, with correspondent perjuries will content them, perjuries of both sorts, assertory and promissory, they may have their fill of. Each man may perform them for himself, and he may have strings of beads to tell them on: each man may thus perform them for himself; or, in proportion to his opulence, he may, for adequate remuneration, cause them, in any desirable quantity, to be performed by others. By means of pre-established signs, he might even for this same purpose press into the service the powers of machinery and steam. He might perform them in the Chinese style: and for every oath taken, have a saucer broken: and thus at no greater expense than the sacrifice of religion, morality, and happiness, confer a benefit on that branch of trade. For the loss by *assertory* perjuries, *amateurs* might indemnify themselves by increase given to the stock of promissory ones.

If this be not agreeable, let all hitherto published editions of the Bible be called in, and appropriately amended editions substituted. Out of, "Thou shalt not take the name of the Lord thy God in vain," let be omitted the word *not*. For "Swear not at all," after the word *swear*, let be inserted the words *swear and cause swear, whatever you will*, whenever by you or yours anything

is to be got by it. Thus would be wiped clean the irreligiousness of the practice; and nothing would be left in it worse than the immorality of it.

Not inconsiderable is the service so recently rendered by the extending to cases styled criminal, the admission so long ago given to Quakers' and Moravians' evidence. Yet how inadequate, and thence how inconsistent the remedy, if it stops there?

Finally, in whatsoever is now deemed and taken to be perjury, guilt, over and above that which consists in the mendacity, either has or has not place: if guilt there is none, then, by the supposition, the ceremony by which the mendacity is constituted perjury, is of no use: if guilt there is, we humbly pray that whatsoever by the Honourable House can be done may be done towards exonerating us and the rest of his Majesty's subjects from the burthen of it: and in particular, such of us, whose destiny on any occasion it may be to serve as jurymen: for if in perjury there may be guilt, we see not how, by men's sitting in a jury-box, it is converted into innocence.

Accordingly, that which, in relation to this subject we pray for, in conclusion, is—that by the substitution of the words *affirm* and *affirmation*, or *asseverate* and *asseveration*, to the words *swear* and *oath*, all persons at whose hands, on a judicial occasion, any declaration in relation to a matter of fact is elicited or received, may be put upon the same footing, as, in and by the statute of the 9th of his present majesty, chapter 30, Quakers and Moravians are, in respect of matters therein mentioned: and that, on no occasion, on which, in the course of a trial, a person is called upon to

deliver evidence, any question be put to him, having for its object the causing him to make declaration of any opinion entertained by him on the subject of religion.

Now for the petty juryman's oath. Assertory or promissory? to which class shall it be aggregated? As the interval between promise and performance lessens, the promissory approaches to, till at last it coincides with, the assertory. Assertory, beyond doubt, is the *witness's* oath: as clearly would be the *juryman's*, if the verdict followed upon the hearing of each witness's testimony, as promptly as the delivery of that same testimony follows upon the performance of the swearing ceremony.

Of this instrument the inefficiency as to the production of the professedly desired effect—that is to say, the exclusion of mendacity,—its efficiency, on the contrary, as to the production of the opposite effect, with the perjury in addition to it,—these are the only results, the exhibition of which belongs, in strictness, to the present purpose. But, another point, too closely connected with this, and too important to be passed over, is its *mischievousness*. Another distinguishable point is the absurdity of this part of the institution: and without bringing this likewise into view, neither the inefficiency, nor the whole of the misefficiency, can be brought to view.

Indeed to show the absurdity of the notion, is to show its mischievousness: at any rate, if intellectual imbecility in the public mind be a mischief, and adherence to gross absurdity a proof of it.

Mark well the state of the case. Men acting together in a body, *twelve*: business of the body,

declaration of an opinion on two matters aken in conjunction—matter of fact and matter of law.

First, as to the matter of fact. Subject-matter of the declaration, a question between A and B. A being either an individual, or a functionary acting in behalf of the public. On a certain occasion, at the time and place in question, did an individual fact, belonging to a certain species of facts, take place or not? This species of fact—is it of the number of those in relation to which provision has been and continues to be made by such or such a portion of the law?

Of this sort in every case are two points, in relation to which, each man of the twelve is called upon to deliver his opinion, as expressed in one or other of two propositions, one or the other of which, they being mutually contradictory propositions, cannot fail of being true: laying out of the question for simplicity's sake the rare case of a sort of verdict called *special.*

Yes; on the question of law: for, the comparatively rare case of a special verdict excepted, in the subject matter of the opinion declared is the matter of law included, as often as a verdict is delivered. Say, in cases called *civil,* but implicitly: but in cases called *penal,* as often as the verdict is against the defendant, most explicitly. For, in the legal sense of the word *guilty,* (which is the only sense here in question,) be the act what it may, doing it is not being *guilty,* unless that act stands prohibited by some law: really existing law in the case of written statute law: feigned to exist in the case of *common law,* in this one of the four or five different meanings of the word.

Be the subject matter of opinion what it may—

be the class of men what it may—be the number of them what it may—to cause them to be all of one mind, all you have to do is to put into their heads the opinion it is your wish to see adopted, and having stowed them in a jury chamber, keep them till they are tired of being there.

In what abundance might not time, labour, and argument—all these valuable commodities—thus be saved? Take the uncertainty of the law: this, if not a proper subject for redress, is at any rate, in no inconsiderable degree, an actual subject-matter of complaint. Make but the full use of the jury boxes, or though it were but of one of them, this uncertainty may at command be changed into unanimity; and this unanimity, if not the same thing as the certainty, will at any rate be the best evidence of it; or, at any rate, the best consolation for the want of it.

Having taken them up from these several courts—taken them up from the seat of aggregate wisdom, which they occupy altogether,—pass through this machine the twelve judges, you save arguments before these sages; pass through it the members of the House of Lords, you save arguments on appeals, and writs of error before the House of Lords.

To return to the unlearned twelve. To each one of them, application is at the same time made of two distinguishable, two widely different, instruments.

One is the *oath*. Of the application made of this instrument, what in this case is the object? To secure, in this instance, verity to that declaration of his which is about to be made.

2. The other instrument is a certain quantity of *pain:* pain, according as he and the others com-

port themselves; increasing, in a quantity proportioned to the duration of it, from the slightest imaginable uneasiness, to a torment such as, if endured would extinguish life: but which no man in the situation in question was ever known, or so much as supposed, to have endured.

A compound of several pains is this same pain: principal ingredients, the pains of hunger and thirst: slighted and first commencing ingredient, the pain of privation, consisting in the non-exercise of whatsoever other occupations would have been more agreeable.

Under these circumstances, if so it be, that, as soon as the evidence with the judge's observations on it, if any, are at a close, either of the two mutually opposite opinions is really entertained by all of them, on the part of no one of them does any breach of his oath take place; as little, on the part of any one of them, does pain in any degree take place: the verdict is pronounced by the foreman, without their going out of the box.

But, as often as, instead of their delivering their verdict, they withdraw into the room prepared for them, then it is that a difference of opinion has place; and then it is that, on the part of all twelve of them together, the appropriate operations begin to be performed. Then it is that, to an indefinite amount, all twelve are made to suffer, that that same number of them, from one to eleven, may be made, and until they have been made, to utter a wilful falsehood, and thus break the oath which they have just been made to take, under the notion of its preventing them from uttering this same falsehood.

True it is, that if any one of them there be, in whose instance pain has had the effect of causing

him no longer to entertain the opinion first entertained by him, but to entertain, instead of it, the opposite opinion declared by the verdict, no such falsehood will in his instance have been uttered. But exists there that person who can really believe that, in the case in question, pain can have any such effect?

And even supposing the effect produced, where is the benefit to justice? Of the two opposite verdicts, to which is it that the pain will produce the transition? for it presses upon the whole number of them. Upon the adoption of the verdict eventually delivered, as well as upon the opposers of it; and whichever of the verdicts it be that is thus adopted, what reason can there be for regarding this as being more likely than its opposite is to be the proper one?

But though to produce a change in the opinion really entertained is a thing which pain cannot do in the instance of any one, yet to produce a change in the opinion declared to be entertained, is a thing which pain, and this very pain, not only can do in the instance of some one of them, but is even known not unfrequently to have done in the instance of all but one.

Of this so triumphantly trumpeted, so anxiously preserved, and so zealously propagated unanimity, what then as often as the jury quits the box is the result? Answer—two doses: one composed of pains, the other of wilful falsehood and perjury. The dose of falsehood, some number, from one to eleven, are made to swallow; the dose of pains, all twelve: all this without the least imaginable benefit to justice.

The verdict, with the opinion expressed by it, being given, comes now the question—in what

way is it, that, on that side, and not on the other, the victory terminated? Answer—In this: the foreman, having been the object of the general choice, the person the most likely to prepare for acceptance one of the two verdicts, is this one. If then by any one or more of them the opposite opinion is entertained, declaration will of course be made of it by all those who entertain it, and the number on each side will thus be seen at once.

Whereupon it is, that if to any one of them a reason occurs, which, as appears to him, has not been brought to view by advocate or judge, naturally and generally, every one who has in his own mind any such reason, will out with it. What in this case does doubtless now and then happen is, that after all the observations delivered by the experienced advocates and judge together, have failed to produce the impression in question, an observation produced by one of the comparatively inexperienced jury has succeeded. But this case, though sometimes exemplified, cannot be stated as the common one.

The oath to make a man speak true; the torture to make him speak false. Such is the contrivance. A two-horse cart; the horses set back to back, with the cart between them: in this behold its parallel.

A contest (and such a contest!) between will and will; and by whom set on foot? By the creator of the unanimity part of the institution. And by whom kept up? By the supporters of it.

In the declaration of the opposing will, others, in any proportion to the whole number, may have joined; thereupon has the pain continued to be endured by all, till those on one side, unable any

longer to endure it, have gone over to the other side.

Exists there that man, in whose opinion, by the power of pain, any such change of the judgment from one side to the other ever had place?

Exists there that man, in whose opinion, on any future occasion, any such effect from such a cause is probable?

So much for opinion: now for experience. Experience says, that, while in this assembly, in which there is torture to produce it, unanimity thus constantly takes place,—in another, in which there is no torture to produce it, instances in abundance are continually happening in which it does not take place.

It is by the institution of another sort of jury—the grand jury—that the experience is furnished. Every day, where this institution has place, before these same petty jurymen, in number exactly twelve, had pronounced their pretended unanimous opinion on that same question, under the name of grand jurymen, in number from thirteen to twenty-four inclusive, with dissentient voices, in any number, from one to eleven inclusive, had been pronouncing theirs.

Yet, only on one side does a grand jury hear evidence; on the two opposite sides the petty jury. In the opposition and conflict, which in the petty jury case has place, is there anything that is of a nature to render coincidence of opinion the more assured?—more assured than when the evidence is all on one side?

Now, if in either of these cases, there could be the shadow of a reason for the compulsory unanimity, in which case would it be? In the case of the grand jury assuredly, rather than in that of the

petty jury. Why? Because, in the grand jury, as above, only on one side is evidence ever heard: in the petty jury constantly on both sides. Is it by conflict in evidence that agreement in opinion is more apt to be produced than by agreement in evidence?

Such being the absurdity of the device, such its inefficiency to every good purpose, behold now the bad purpose in relation to which it is *efficient*. One case alone excepted, of which presently.

1. First as to justice. Assured possessor of the irresistible evil, the fabled wishing-cap is yours: enter in triumph into any jury box you please: on your will depends the verdict.

Compared with this power of yours, what is the influence of the most skilful judge? He can but cajole: you necessitate. Behold how sure your success, how small the cost of it. Every time the jury have staid out of court so much as an hour, not to say every time they have gone out of court at all—there has been a difference of opinion, and next to a certainty, perjury. In no one instance endurance of the uneasiness for so long a term as forty-eight hours has ever been known. Yours being the verdict, behold in this sufferance the limits to the utmost price you can have to pay for it.

Man of desperate fortunes! would you retrieve them? In civil cases, as often as it happens to you to be on a jury, and the value at stake is such as makes it worth your while, if on the wrong side there is consciousness of wrong, and the case next to a desperate one, the more depraved the character of the wrong-doer, the more assured you

will be that an offer to share it with you will not be refused.

In penal cases, keep on the look-out for the richest criminals.

Defendant, with another man's money in your hands, look well over the jury list: observe whether there be not this or that one of them, whose surely effectual service may be gained by appropriate liberality.

Murderer, incendiary, go through the whole list: if one experiment fails, pass on to another: you have nothing to lose by it: you have everything to gain by it.

II. Now as to religion. Behold the effect here.

Lowering the efficiency of the religious sanction in its natural and genuine state, clear of this spurious pretended additament, is or is not this an evil? In no known instance has the force of the oath had the effect of causing the torture to be endured for so long a time as eight-and-forty hours. Thus weak being the religious sanction, even with the benefit of this reinforcement, what would be the amount of its influence, if operating alone? Next to nothing would decidedly be the answer, were it not for the torture. But, by the torture, this argument in proof of the inefficiency is, at any rate, weakened if not repelled altogether. For, from the insufficiency of the religious sanction to prevail over pain when screwed up to such a pitch as to extinguish life, it follows not that any such insufficiency has place where no such pain has place. Oath or no oath, perjury or no perjury, scarcely will any man apprehend for himself, at the hands of the Almighty, punishment

for non-fulfilment, of an obligation, for performance of which the physical capacity will, in his eyes, be altogether wanting: at any rate, scarcely will it to any man appear probable, that, to any considerable extent, the obligation will, in quality of a cause of such endurance, have been capable of producing any considerable effect: or accordingly, that it is consistent with Almighty wisdom to employ it to such a purpose. And, as to the cessation of the endurance after a duration comparatively so short, why make an attempt, the success of which is plainly impossible?

That in these considerations there is more or less of reason will hardly be disputed. But, from this it follows not, that they will present themselves to everybody: and, in every eye, to which this, or something to this effect, does not present itself, the efficiency of the religious sanction in its natural state will, to say the least, be by this supposed reinforcement, greatly weakened, not to say reduced to nothing.

By these considerations is moreover suggested a course of experiment, by which, on the degree of efficiency, if any, on the part of this ceremony, no small light would, it should seem, be cast. Continuing to apply the torture as at present in all instances, apply the ceremony in some, omitting it in others: then, let observation be made of the proportionable number of instances, in which the jurors betake themselves to the retiring room, and of those in which they do *not:* and in regard to those instances in which they do give this proof of the efficiency of the religious (not forgetting the moral) sanction, minute down the length of the endurance.

Of those right reverend persons, who, as above,

had sworn, each of them, to set up, and endow schools,—the majority are known to have actually forborne to commit the correspondent perjury. But, as to jurors, on the part of all those who have ever sworn to forbear to express an opinion opposite to their own, notwithstanding all torture—in other words, to forbear from perjuring themselves, what instance was ever known of such forbearance? Conclusion, this. Supposed, a pretended effect of this spurious additament strengthening the instrument it is added to: real effect, weakening it.

Mark now the sort of charity which the unanimity part of the institution, and the use of such an instrument as the oath for the production of the effect, proves and inculcates: proves to have existence on the part of the creators and preservers of it: inculcates into those minds to whom the force of it is applied. Numbers (suppose) eleven on one side, one alone on the other. Says the one of them now to himself—do what the others may, never will I perjure myself. Saying this, does he not at the same time say this also: Yes—these my brethren, eleven in number—all these I will make perjure themselves: damned I will not be myself: but damned shall be these my brethren. If the word damned be *not* the proper one, substitute, ye who object to it, substitute that which *is*.

Ye—if after this exposure any such there be—Ye, who persisting in the application made of the ceremony: in the application made of it, in any case, and in the case of jurymen's oaths in particular,—do really believe, that, for every instance of perjury, a punishment over and above that for simple mendacity, will in the life to come be suffered by the delinquent,—think of the magnitude

of the evil, which you are endeavouring to perpetuate! take balance in hand and say—whether, by the application thus made of the ceremony, it is in the nature of the case, that good, in any such quantity as to outweigh the evil, should be produced.

Take any man by whom, in any instance, this perjury has been committed: either he believes that punishment in the life to come will attach upon him, or he does not: if not, then is the oath in its professed character, in the instance in question, compleatly ineffective: if he does, think then of the suffering which it produces. Inefficient or mischievous, (and who can say to what a degree mischievous?) such is the alternative.

Now for the benefit from this unanimity: meaning now the benefit—if not to the creators, to the preservers and promoters.

To entertain any such opinion, as that by pain, unanimity of real opinion, on the part of every or any twelve men is actually produced, may be or not be in the power of human folly. But to produce the desire and the endeavour to *cause* this same opinion to be entertained, is but too much in the power, and too abundantly in the practice of human knavery. To the existing system of English-bred jury law in general, and to this part of it in particular, continues to be ascribed this miracle. Then comes the practical use. A system by which such miracles are at all times wrought, and these miracles such delightful ones, —how impossible is it to change it for the better! how dangerous to meddle with it.

In so conspicuous a part as this, no change in the English-bred judiciary procedure system could be so made or attempted, without drawing the

public eye upon the whole of it: but, let but the public eye pervade the whole of it, behold it falls to pieces.

Such of Judge and Co. was the end in view, and such to Judge and Co. has been the use. Such moreover it will continue to be, so long as jurors shall continue to be made of clay, and judges the potters working it. But under their hands, thanks to their carelessness, it has grown and continues to grow stiffer and stiffer. While teaching these their pupils thus to contemn the law, these sages have themselves fallen to such a degree into contempt, that the scholars themselves have at length begun to contemn their own teachers. Every day is this contempt increasing: and if so it be, that contempt of a bad system is necessary to the substitution of a good one, a more beneficial result than these two conjoined, cannot be wished for.

Thanks to this carelessness? Yes: for it is by arbitrary power above, that the arbitrary power below, superior on many occasions to that of its creator, has or hath been seen created. By arbitrary power in one quarter or the other, thus it is that everything is done: in both, the law is trampled upon. Of the mixture of oaths, perjury and torture, this is one effect: so far therefore of the oaths.

Blind and speechless acquiescence, under an absurd tyranny, being the result, by what process of reasoning were the inventors led to expect it? Answer—by the following. On each occasion, the portion of law, to which the jury are called upon to join in giving execution and effect, being supposed beneficial,—as, for the purpose of the argument it cannot but be, one thing desirable is, of course, that, in the instance in question, and by

means of the verdict pronounced, execution and effect should be accordingly given to it. But, at the same time, another thing alike desirable, is that, *that* same desirable effect being produced, it shall by the people at large be believed to be so.

This desirable belief, if produced, in what way then will it be produced? In this way. In the body of men thus selected, the people at large behold their own representatives, and moreover their own reporters. Better ground for their persuasion than the report made by these their reporters, they cannot have. On the occasion in question, they, (the people,) have not themselves had the means of informing themselves: these their representatives and reporters, *have*.

Now then, how to make the people believe that, on every occasion on which a petty jury is employed, everything is thus as it should be? Such was the problem. The solution, this: On this, as on any other occasion, take any considerable number of unobjectionable persons for judges,—the larger the portion of those who agree in the same opinion, the greater is found by experience the probability of their being in the right: thence it is, that, on every occasion, in the majority of such men, the confidence is greater than in the minority. Still, however, remains this same minority by which, in proportion to its number, this so desirable confidence is diminished, and prevented from being entire. Now then, let but this troublesome obstacle be entirely done away, entire is thereby rendered this so desirable confidence. Well then —apply the torture, the minority vanishes.

Another feature belonging to jury trial is the secresy of which the retiring chamber is the scene.

But, not belonging to the subject of oaths, this feature belongs not to the present purpose.

Would but the mendacity content them, this they might have without the oath: without the oath, the torture would give it them at least as surely as with. But, for such important purposes as above this same instrument of imposition was needed: and on the same occasion in particular, to make men by the terrific appearance shut their eyes, and prevent them from seeing into the absurdity of the contrivance.

In the shape of an exception, allusion has been made to one good effect of the power of conquest thus given to the strongest of the twelve wills. The good effect is this. A law (suppose) has place, by which, were execution and effect given to it, maleficence would be infused into the whole frame of government: absolutism for example, with all its attendant miseries. Individuals at the same time are not altogether wanting, each of whom, if, in his capacity of juryman, the law in question were brought before him for execution, would oppose to it this irresistible will, would in a word apply his *veto* to it. By the King and the Lords this veto is applicable to the laws in the first stage of their progress—the stage of legislation: by juries, in the last stage—the stage of judicature.

In the case of offences stiled *political*, and in these perhaps alone, is its usefulness indispensable, as it is concentrative: meaning, by political offences, those by which the effective power, of the functionaries exercising in chief the powers of government, is struck at: treason, for example, sedition, and political defamation: meaning, in this last case, acts striking at the reputation of men

in official situations, considered as such, in which class of cases, constituting as it does the main, not to say sole security against absolutism, rather than part with it, better it were to endure much more than the evil of it in all other cases.

That by the fear of punishment at the hands of the Almighty, no such endurance to the amount of two days, has ever been produced, is indeed matter of demonstration: since, as above observed, to that amount, in no instance whatsoever has the effect been produced at any time.

But that in instances relatively not unfrequent, by sympathy for the happiness of the community at large, corroborated by antipathy towards men regarded as acting in hostility to it, instances of endurance such as have actually been productive of this good effect, there seems reason sufficient to believe to have had place.

To this generous self-devotion does the country appear to be altogether indebted for such portion of actual though unsanctioned and ever precarious liberty, sole security for all other salutary liberties the press is in possession of.

That but to too great an extent the abovementioned disastrous supposition stands verified, is but too undeniable. Under the existing system, take away this irregular power of the jury, neither are laws wanting, nor power conjoined with will to give execution and effect to them, sufficient to convert the form of government, such as it is, into as perfect an absolutism as anybody could desire.

Determined instruments of absolutism,—and, as such, with scarce an exception, determined and inexorable enemies of the press, have at all times been—all English judges: accordingly, on every occasion of a prosecution for a so-called libel, in

which censure in any shape has been applied to the conduct of any public functionary, in that same proportion has been the constancy of the directions given by them to juries, to pronounce for their verdict the word *guilty*. Yet every now and then has an English jury refused to render itself in another sense *guilty*, by the utterance of that same momentous word.

Now then, admitting the effect to be good, in what way—by what *means*, has this same determined will been productive of it? By contributing to give execution and effect to the body of the law? No; but by successful obstruction and frustration applied to it.

Accordingly, in this instance is it any part of our prayer that the torture, thus applied, should be taken off? No; but that so long as the form of government continues what it is, it should be continued.

One set of cases there is, in which the real, or what comes to the same thing, the supposed interest of the ruling few, is in a state of but too decided opposition to that of the subject many; and to the whole extent of these cases, our prayer is, that this same state of things, anarchical as it is, may continue unimpaired.

Thus much for elucidation: to make out any catalogue of these cases belongs not to this place.

Will it be said, that in some of these cases it is to the direction of the judge, and not to the evidence, that the verdict has been in opposition? Perhaps so. But, at any rate, neither are cases wanting, in which, with the salutary view in question, verdicts have been given by jurors in the very teeth of evidence. Upon their continuing prepared upon occasion so to do, depends, so to

us it appears, all possibility of escape from the jaws of absolutism.

Not that we are not fully sensible that, in various particulars, the power of the jury is, in the nature of the institution, of essential, not to say indispensable service to justice; in particular, in respect of the obligation it lays the judge under, of giving reasons for his conduct, and bestowing on the question the degree of attention necessary for that purpose; as also, the furnishing to him such information respecting various grounds for it, as he could not otherwise be in possession of. But, as an ultimate test of truth, that the least should possess a better chance than the most exercised and instructed judgment, of being the most apt, is a notion which we do not feel it in our power to embrace. But on the subject of juries, more will be to be said under another head.

VI. *Device the sixth. Delay, in groundless and boundless lengths, established.*

Delay (need it be said) is denial, while it lasts. One third of the year, justice, pretended, as above, to be administered: the two other thirds not so much as pretended. Such was the state of things determined upon, and produced accordingly.

A calculation was made: one third of the year was found to suffice for getting into the law granary all the grist that the country could supply it with; that was the time for the mill to go: remained the two other thirds on which the miller was free to amuse himself. One third of the year, said he, will suffice for getting in all the money

that the whole people can muster for laying out in our shops: work for one third of the year, amusement for the two other thirds. Sittings out of term time belonged not to those days. At the present day, while some judges, as far as gout will let them, sit at ease, other judges overwork and overfatten themselves. But so managed is the work, that the delay, with its profits and its miseries, continues undiminished. Moreover, by the delay was left a correspondent interval for incidents capable of being made productive of fresh fees.

What is the day on which justice ought to sleep?—what the hour? That on which injustice does so too.

Look now to other departments; see how things would go on if like delay were there: what if during one part of the year, taxes being collected, during the other two thirds they were left uncollected?

What if, during one third of the year, the naval force being on duty, during the other two thirds the seas were left open to enemies and pirates?

What if, during one third of the year, the army being on duty, the other two thirds the country were left undefended, while enemies were at the work of plunderage and devastation?

From internal enemies, for want of justice, the sufferings of the people would not be so great as from external enemies for want of defence. True; but a suffering's not being the greatest possible, was no reason why men should be subjected to it. How came it that, in those days, while men were guarded in some sort against sufferings at the hands of external, they were subjected to it at the hands of internal evil-doers? Answer: By

the suffering produced by the foreign adversaries these judges would themselves have been sufferers. By the sufferings produced by the domestic adversaries they were gainers.

Look now to professions.

What if, on being called in by a man with a stone in his bladder, a surgeon were to say to him, "Lie there and suffer while I am amusing myself: four months hence I may perhaps come and cut you." By surgeons this is not said. No surgeon has a monopoly of surgery. Judges do say this. Judges, in small numbers, have among them the monopoly of the commodity sold under the name of *justice*.

In the eyes of Blackstone, all this evil is so much good. First, because it was done so early in the good old times. But, above all, because it was done by lawyers. To a husbandman, during harvest time, attendance in a court (he observed) would have been attended with inconvenience. True: and this was one reason why, instead of two or three hundred miles, he should have had but ten or twelve miles to travel ere he reached it. Attendance to get back a farming stock unjustly taken, would have been inconvenient. True: but leaving it in the hands of the depredator, and thus leaving the harvest to rot in the ground, was still more inconvenient. So much for harvest time. But all the year is not harvest time, and the whole remainder of the year had its judges' sabbaths as well as harvest time: sabbaths, not of days, but of months continuance.

What the people *now* suffer from the system of delay thus organized,—what the judges now get by it, belongs not in strictness to the present head. But neither is it without claim to notice.

Chiefly to the cases called *civil* applies what is above. Now for cases called *penal*. Behold here the interest of judges changing, and with it of course the provision made by them.

In penal cases, and in particular in those most highly penal, not a day in the year but courts are open to receive complaint: and complaint made, men complained against, guilty and innocent together, are put into jail. How so? because, as above observed, judges have bodies, judges have gouts, judges have lives: so also, as well as other men, have all those who, in point of interest, are in any particular way connected with them: bodies, goods, and lives, which, but for some such protection, might be wounded, carried off, or destroyed.

When in jail, there they are, guilty and innocent together, from 2 days to 182, as chance pleases. How so? Because, to judges and those who are in league with judges, whether, in this case a man is innocent or guilty—stays in jail 2 days or 182 days, makes no difference: not to speak of counties and cases in which the 182 days may be doubled.

Oh yes: to Judge and Co. the time does make a difference: for, from the difference between the 2 days and the 182 days, come fees. Jail produces bailing and bailing produces fees. Innocent or guilty, those who can find bail and fees, are let out: those who are too poor to find either, stay in. How can it be otherwise? Under English judge-made law, the only unpardonable crime is poverty.

Contamination! contamination! Between uncompleted examination and definitive trial, whole days, weeks and months are rolling on: contamination thickening all the while. Complaints of

this evil not sparing: not least abundant by this or that one, of those by whom it is caused. He, who can remove the evil and does not, causes, if not the commencement, at any rate the continuance of it. Of such contaminators, the most insensible, the most obdurate, the most inexorable, the most inexcusable, are they not legislators?

All contamination in prisons—all unintended sufferings in prisons—all possibility of escape from prisons, they might prevent and they will not. Why will they not? One word, *Panopticon*, explains the mystery. Pitt gave acceptance to it while he lived, gave support to it, such as he was able. Royal vengeance stopt it. Interest, sinister and all-powerful interest, opposed to every thing good in proportion as it is good, keeps it still out of existence. A little while, and the inventors will, both of them, have the merit of being dead: when their eyes cannot be rejoiced at the sight of it, then will it rise from under the oppression which has thus long kept it down: then will the public eye open itself: then will public indignation kindle; then will the public voice break out afresh, and resistance no longer be deemed compatible with prudence. To conclude—Delay gave ease: delay bred incidents: incidents were made to breed fees: so it must have been in those early times: so it is in these present times. Ease and fees—fruits so sweet, both together from one plant: how felicitous!

Two causes there are, by either of which, without blame in any shape to anything or anybody—to a judge, or to the system of procedure:—delay, to any amount, may be necessitated.

Of these causes, those whose interest is served by the delay and by the system in which it is an

inseparable ingredient, take of course their advantage and do what depends upon them towards making the people believe that the existing delay is alike necessary in the cases to which these causes do not apply, as in those in which they do.

1. One is, non-forthcomingness of evidence: of this cause, the influence, it is manifest, extends itself to every case, to every species of suit.

2. The other is *complication:* complicatedness of the subject-matter or other circumstances belonging to the suit. This applies not beyond a particular class of suits: but, in the nature of things this is unavoidably but too extensive.—Subject-matter, suppose, a mass of property: in the course of the suit, operations to be performed on it, collection and distribution of the component parts of that same mass: as in the case of the disposal made of the effects of a person lately deceased, or of a person in a state of insolvency. Over what parts of the globe may it not happen to the subject-matter on the one hand, to both debtors and sharers in the balance, if any, to be dispersed. So likewise where without death on suspicion of insolvency, demand is made of an account, by a party to transactions to which it may happen to have been not less complicated than the above.

In a country cause, by this or that accident—absence for example of a material witness, trial, without loss of cause to the party in the right is at that moment rendered impossible. What is the consequence? The cause goes off for six months: expense of witnesses, counsel, attornies, all disbursed in waste: and at the end of the six months, if it happens to it to be on the *remanet* list, for another six months—unless the party is ruined by the

preparation for the first trial, profit to Judge and Co. upon the second, and perhaps upon a third. Necessary or not, motion for a new trial, with additional profit thereupon, according to circumstances.

Suppose now the court sitting all the year round: the accident of one day may now be repaired the next.

Of further particulars as to the evil and causes of delay, mention will require to be made under the head of *Jurisdiction Split*.

VII. *Device the Seventh.—Precipitation Necessitated.*

Under the fee-gathering system, states of things the most opposite—delay and precipitation—concur in giving existence to the desired effect.

Of delay, the mode of establishment and the relative usefulness have just been seen. The precipitation grew by degrees out of the delay. At the early period in question, scarcely could it have been contemplated: not but that from the first, precipitation, with its evils, were among the natural effects of the opposite abuse. But at present it flourishes, and on each occasion produces its fruits: and only for the purpose of the present time is the state of the system at that early period here brought to view.

Be the business what it may, if, of the time that might and should have been allotted to it, a portion is kept unemployed, proportioned to the increase given to the quantity of the business will be whatever hurry takes place in the course of the time which the business is allowed to occupy.

Suits at common law, and as such brought for trial, or pretended so to be brought before a jury, may be divided into two classes: those of which

it is known that, by possibility, they may be tried by a jury, and those of which it is known that they can not.

Cause of incapacity of being brought under the cognizance of a jury, complexity. Of modes of complexity capable of producing this effect, examples are the following.

1. Multitude of facts which, by one and the same demand or defence are undertaken to be proved or disproved on one or both sides: for example, in an account.

2. Multitude of witnesses liable to be examined in relation to each alleged fact: especially if *alibi* evidence, or evidence as to character, is received.

These sources, however, are but two of a multitude of distinguishable sources, out of which complexity is in use to arise.

Suit called on, jury in box, the impossibility of trial is universally recognized. What follows? Off the suit goes to arbitration. Aptly learned and well-wigged gentlemen in plenty, there they sit, all known as such by the judge. Choice is made of one for each side, or the same for both. Now again comes the time for delay. Five guineas a day, or less, secures and maximizes it: exemplary are then the care and deliberation. For securing the whole of the mass of evidence which the case affords, the powers are not now altogether adequate. But neither would they have been found so, had the trial gone on: for, under the existing system, no assemblage of powers, adequate to the purpose, has place anywhere.

Setting aside this deficiency and premium for delay, here may be seen the natural mode of procedure. Supposing the judge but one, with an audience sufficient in quality and quantity to com-

pose a bridle for his discretion, and he salaried instead of feed, here would everything be as it should be. But the misfortune is—that, instead of being substituted to the elsewhere established technical mode of procedure, the natural mode is here added to it, leaving the burthen unalleviated.

So much for all jury causes taken together. Enter now the topographical distinction—*country* causes and *town* causes. The country outweighing the town causes in the scientific *mixture* of delay and precipitation.

Country causes are dispatched post haste: the whole machinery running round in a circuit. At each assize,—upon the blind fixation principle, (of which presently,)—allotment made of a certain number of days:—two, three, or four, as the case may be: business, for which two or three hours might have been more than sufficient, or two or three months less than sufficient, crammed into the compass of those same two or three days. By leaving evidence unheard, arguments undelivered or unattended to,—one part, of the whole number of suits set down for trial, is now made to undergo that process: the other part remain unheard, and are called *remanets* or *remanents*. Six months is the shortest interval before they come upon the carpet a second time: that is to say, if come they do: for, various are the causes, by any of which they may be extinguished: deperition of evidence, drainage of purse, death: death, in a certain case, whether natural or no, not the less violent because lingering: offence, manslaughter (to say no worse): manslaughter by Judge and Co. with their delay, expense, and vexation: substitutes—how safe convenient and profitable!—to poison, sword and dagger.

Remanets increase and multiply. Begotten by the remanets of Spring, are the remanets of Michaelmas.

Eminently instructive would be a regularly published list of all of them.

Now as to *town* causes. Here the scene changes. Of delay, considerably less: thence, so of precipitation. For trials, in the whole of England, with the exception of the metropolis, assizes in the year no more than two; in some counties, no more than one. In the metropolis, *Terms* four: with Sittings before, in, and after each: total, 12: and in each of the 12, upon an average, more days than in an assize. Under these circumstances, in the metropolis, may be seen a choice made: not made by one Hercules, but by two of them. The one who has fewest causes gets most ease: the one who has most causes gets most fees. Health suffers: and martyrdom to duty is the name given to canine appetite for fees. Velocity in horsemanship sees itself rivalled by velocity in judicature.

Mark now how admirably well adapted is this compound of delay and precipitation to the ends of judicature. Carried on to the last link through the chain of useless proceedings, has been the corresponding chain of fees: so much for *fees*. Pending, the suit may have been for years, not a syllable all the while suffered to present itself to the mind of a judge, such is the fruit of the *mechanical* mode of judicature, (of which presently,) substituted to the *rational:* so much for ease. Then comes the agreeable circumstance of making recommendation of the man or men, by whom, though without the name, the functions of the judge are then to be performed: so much for *patronage*.

The boots that fitted all legs—the *seven-leagued* boots—may be seen in fable. The judicial establishment which, should parliament so please, would fit itself to all quantities of business, may be seen, as below, in sober truth. *Deputation* is the name of the instrument, by which this quality would be given to it. *Powers of deputation* is the name given to the so highly elastic and self-accommodating boots.

VIII. *Device the Eighth.—Blind Fixation of times for judicial operations.*

Where flexibility is necessary, fixation made. Example—most prominent, effective, and instructive—that which is afforded by the appointment of days for attendance, at the judgment seat: attendance of parties, or witnesses, or both.

Commencement (suppose) given to the suit,—as, in every case, it might and should be—by application, made by some person in quality of suitor, or, in case of necessity, by some substitute of his, at the sitting of the judge. Where a suit is intended, (simple information without suit being out of the question,) the applicant demanding, that he himself, or some person mentioned by him, be admitted as pursuer against some person as proposed defendant. If on this first occasion, the suit for the commencement of which the application is thus made, is not dismissed, some day for the continuance of it will of course be to be appointed: some day thereafter, say for example, in ordinary cases, the second, third, or fourth day, as it may happen, distance in place taken into account, reckoning from the day on which the originating application is made. So much as to what should be the practice: now as to what it is. In pursuance

of the device here in question—say upon the *blind fixation principle*, the existing system appoints for all cases without distinction some one day by general rule: for each subsequent operation, 15 days suppose, reckoning from the one last preceding. Blind fixation, say without difficulty: for, blind, when made by a universally and indiscriminately applying rule, such fixation cannot but be.

As to the originating application,—in neither case can in the nature of things any fixt day for it have place. Such application imports actual appearance of a suitor in the presence of the judge. But, applied to the existing system, how erroneous is this conception! For, such is the established etiquette, to no suitor, till the day on which conclusion is to be given to the suit, is his lordship at home. What then is the mode which commencement is given to it? Answer, this: By a person acting as an attorney for the plaintiff, the appropriate instrument, *the writ* (as the phrase is,) is *taken out:* in plain English, bought at the justice shop, of a clerk, employed by the judge, in serving out the commodity, to every one who will pay for it, no question asked. The writ itself is a mass of unintelligible absurdity: but the result is, that if the proposed defendant does not constitute himself such by appointing an attorney to act for him in the correspondent manner, the judge will, at his charge, cause the plaintiff to have whatever it is that he demands.

In regard to defendants, setting aside for the present the question as to witnesses, co-pursuers, and co-defendants, what is clear is, that, sooner or later, to each proposed defendant the faculty ought to be afforded of acting, if so disposed, in contestation of the demand made at his charge, by the individual admitted as pursuer. But to

his so acting, a necessary condition is, that he should have received notice of his being called upon so to act. To his being so, another condition necessary is, that a mandate for the purpose should have been delivered at some individual spot which, at that same moment, is the place of his abode.

Now then, as to this same abode, it may be within a stone's throw of the justice-chamber, or without, being out of the local jurisdiction of the court, at about three hundred miles distance, more or less. In the first case, supposing the defendant at home, and the judge at home, and disposed to hear him, two or three minutes would suffice for the production of the necessary intercourse, i. e. the interview between this suitor and the judge in the chamber of justice; in the other case, twice as many *days* would not suffice. What on an occasion of this sort does judicial practice? It appoints one and the same day for every individual defendant; no regard paid to distance in place, or quantity of time necessary to be expended in passing from the one place to the other.

So much for the *operation*,—the operation of attending, or, as the word is, *appearing*. Now for instruments. Where all that is to be done at the appointed day is appearance in a chamber mentioned, short in comparison is the interval that may suffice for adequate notice: and such and no other was the state of things at the primeval period all along in view. But where, within the appointed interval, an ulterior operation comes to be performed, that operation consisting in the drawing up and exhibition of a written instrument of a certain sort; in a word, say one of the sort of *written* instruments above spoken of by the name of *written pleadings;* widely different now is the

aspect of the case: the time requisite may, upon a scale of indefinite length, be varied by the quantity of writing necessary, not to speak of an unconjecturable variety of other circumstances. And thus it is, that, in this case, so it may be that by the next day may be afforded notice long enough, or by the next day two months, notice not long enough. Against the notice's being neither too long nor not long enough, the chances, it is evident, are, so to speak, an infinity to one.

Of the individual in whose instance attendance is requisite to be paid, or some other operation performed, some instrument already in existence established, or some written instrument, not already in existence, to be framed, and thereupon exhibited, the residence is, as above, *supposed* to be within the jurisdiction of the court. But, on the other had, it may, in fact, be in another hemisphere; and so it frequently is. No matter, the day is fixt,—fixt by the general rule: fifteen days, suppose, are given for a proposed witness, with his evidence, to make his appearance from British India, or Australia, or Peru.

Such, then, under the direction of this blind fixation principle, is the practice throughout the whole of the existing system of the technical judicature. It was the natural, and, in a manner, the necessary result of the virtual and effective exclusion which, at the primeval period all along in question, by the exclusive use of a language foreign to them, was put upon the parties.

Of this same blindness, behold now the consequences; for in these consequences may be seen the *motive*,—the motive, by the operation of which the eyes were at that time shut, and to this day continue to be shut. In each of the two opposite

events, disservice is rendered to the interest of justice, correspondent service to the interests of judicature.

The time allowed, is it too long? If yes, then by the overlength is created so much needless delay; and of evil in that shape, the consequences have been already brought to view. Is it too short? Then comes a demand for the enlargement of it; and with this demand comes down a shower of *fees*.

A *motion* requires to be made: a motion having, in a common law court, commonly for its support, some alleged fact, or set of facts, with an affidavit, or set of affidavits, by which allegation of their existence is made; and of this motion, the ground made is here, by the supposition, in point of reason, uncontestible. But it follows not that, in point of fact, it will not be contested. From the motion have, at any rate, come some fees; and from the contestation, if any, will come many more fees.

Every motion made is, in fact, a suit within a suit; and of the thus needlessly interpolated suit, the expense is abundantly greater than under a system having for its ends the ends of justice would, in the vast majority of cases, be the whole of the needful expense.

By *motion* understand here a motion which is *not* of course. For motions are divided into *motions of course*, and *motions at large*, or say *not* of course. Of the mention thus made of the distinction, the object is, that notice may thereby be received by the Honorable House, that every sum obtained for making a motion of course, is money obtained from the suitors by extortion, practised on false pretences, no motion being really made:

sharers in the produce of the extortion, the attorney, the advocate, the subordinate judicial officers, and the judge.

Of this contrivance for the manufacture of motions,—mark well the absurdity, in any other character than that of the manufacture of fees. If in judicature this is right, let it now be applied to legislature, and observe the consequences. Except where the appropriate facts are deemed of themselves sufficiently notorious, no operation is ever performed by the Honorable House, no proceeding carried for which a determinate ground has not been made by special evidence. By your Honorable House, either in the whole House, or in and by its committees, according to the occasion and the purpose, evidence is convened from every part of the island, and upon occasion from every part of the globe. Now then, for argument sake, suppose (what in reality is not possible) suppose an Honorable Member to stand up and make a motion, that, on every occasion on which any person is ordered to be in attendance at the House, for the purpose of being examined, the day of attendance shall be on a day certain, and in every instance one and the same: say, for example, the fifteenth day, reckoning from that on which the motion shall have been made. A motion made to any such effect,—would it not be regarded as evidence of mental derangement, and that but too conclusive? Yet in judicature this is no more than what has all along been the practice; and till this moment without objection by all judges, professing at the same time to be directing their practice to the ends of justice.

But justification will perhaps be attempted: and if it be, imagination will be set to work for

the creation of it: process, fallacy: result, in so far as successful, illusion and deception. Principal instruments of the fallacy, the words *irregularity* and *regularity*.

The mode in which they have acquired this recommendatory property seems to be this. With the word *irregularity*, sentiments of disapprobation have from the earliest time of life stood associated: at school, irregularity has betrayed itself by straying out of bounds: at a later period, by purchase of present pleasure at the expence of greater good in future contingency. Irregularity is therefore a bad thing; and as such, attended with bad consequences. But bad consequences ought to be prevented; and to this end whatever operation is chargeable with irregularity, ought to be set aside, and to this purpose considered as not having been performed; whence the motion for "setting aside proceedings" (as the phrase is), for irregularity.

But of irregularity, regularity is the opposite: irregularity being a bad thing, regularity is in a proportionable degree a good thing, and whatsoever is good, ought to have place everywhere. Apply it accordingly to judicial procedure: whatever operation requires to be performed, a day *certain* ought to be fixed for the performance of it: and intimate is the connection between regularity and certainty: and as fixation is the mother or daughter, no matter which, of regularity, so is she of certainty.

In proportion as the interval is too short, and thence the existence of motions for enlargement more certain, the rule receives the praise of *strictness:* for strictness is regularity, in a transcendant degree, or say in perfection. Accordingly, equity

practice teems with rules of this kind—(say *time-fixation rules*)—compliance with which is notoriously and confessedly impossible.

Rule—is it a good thing? Yes: in so far as directed, and with success to a right object: no; if directed to a wrong object: no; even if laid down without an object: for, on the field of law, all rule imports *coercion:* and, taken by itself, coercion is evil, and that evil pure. Now then, the rules in question—what are they? To outward appearance, nothing worse than rules without an object: but in inward nature and design, rules with a bad object: rules laid down for a bad purpose; for the purpose of producing by extension, under colour of justice, the object of the all-ruling passion—fees.

IX. *Device the ninth. Mechanical substituted to mental judicature.*

Of the arrangement by which the parties, and in particular the first applying party, the plaintiff, was excluded from the presence of the judge, this was an immediate result, as well as an intended fruit. Already, in the blind fixation device, may be seen part and parcel of it: a peg or a nail driven into a board, is the prototype of a day fixt.

How to cause the suit to be carried on down to the last stage without the judge's knowing anything of the matter, this was the problem to be solved, and solved it was: fruit of the contrivance, profit gained: all trouble, all time, all labour, all responsibility, saved.

By the parties in conjunction, that is to say, not the parties, but their respective agents, with the judge's subordinates, all impregnated with

interests repugnant to the interests of parties, everything requisite to be done was to be done: agent fighting against agent, with arms respectively bought by them at the shop kept by the judge for the purpose.

Mechanical this mode may truly be stiled, in opposition to mental: of no such faculty as those the aggregate of which is termed *mind*, any application being at any part of the time made by him: irrational and non-rational are terms that fall short of the monstrosity of it.

A cider-press, worked by steam, is the emblem of a judicatory, acting in pursuance of this device. By the press, with its moving power, the juice is squeezed out of apples: by judges, and by means of the machinery of which their predecessors were the inventors, and themselves the preservers and improvers, the money, in the shape of fees, is squeezed out of suitors. By the piston, no thought is applied either to the apples or to the sweets extracted from them. By the judge as little, to the operation performed and instruments exhibited under the authority of his name, or to the effects of them on the suitors: not so as to the *sweets:* little are they in danger of being out of mind.

An attorney, along with a fee, puts a written paper into a box, the judge knowing nothing about the matter. This done, into the same or another box, another fee is dropped, with another written paper, of which the judge has the same knowledge.

By each fee, the agent on one side purchases of the judge the faculty and benefit of plundering, impoverishing, and vexing at the same time his own client, and the suitor on the other side;

whereupon, the agent of the party on the other side does the like: and thus the compliment, as the phrase is, is returned.

For elucidation follows an example: that of *signing judgment:* by this one, all others may be rendered needless. "I have signed judgment," (says somebody), who, would it be supposed, is this somebody? A judge? no: but an attorney: the attorney of one of the parties. What? Is not then the judge the person by whom the act of signature is performed? Not he indeed: but the attorney, is he, by whom alone any thought is applied to the subject, any *judgment* exercised; the judge signs nothing: a clerk under the judge signs what is given him to sign as above. Under the fixation system, as above, a day has been fixed for the attorney of the party, say the defendant, to do something: say, to send in some written instrument, on pain of loss of cause. The day passed, the attorney takes to the proper officer the instrument stiled *the judgment*, and so, as above, a clerk of the judge puts his signature to it.

The problem has been already mentioned. The result aimed at in the first instance is judicature without thought. In so far as this is effected, the solution is complete; in so far as this is unattainable, next comes judicature with the minimum of thought: in this case, an approximation is all that lies within the power of art and science.

Of the case in which the solution is complete, that in which a clerk's is the hand by which the judgment is signed, is an example: the judge whose name has been written by him on a piece of paper or parchment knows no more about the matter than his learned brother who is sitting at the same time upon the Calcutta bench.

At all times, of the whole number of actions commenced, a great majority would probably be found thus disposed of. For such will be the case, where the so stiled defendant, being by indigence disabled from becoming so in reality, sits helpless while the suit is taking the course which the mechanism has pre-established.

As to his property, instead of going, in proportionable shares among his creditors, it is in the first instance, by Judge and Co. divided, if not the whole of it, always a large part of it, among themselves.

Creditors are made to abate from their demands: Judge and Co. know not what it is to make abatement.

One little improvement remains to be made: substitution of an automaton to the judge. Written by a penman of this sort have been seen lines more beautiful than were ever written by a judge. Of the essential characteristic of English judicature, the grand instrument of delusion—the masquerade dress—this deputy would not be left destitute. Bowels, if given to him, would be but surplusage: if his principal had had any, he would not have been where he is.

Suppose now a system of procedure under which everything was done by the appearance of the parties in the presence of each other, before an unfee-fed judge. Creditors more than one—*equitable adjustment*, as the phrase is, would have place: equitable adjustment, without that injustice for which this phrase has too often been made a mask: for the reducing, on both sides taken together, the burthen to its minimum, the arrangements requisite would be made. To the debtor

respite might be granted, where, to both interests taken together, the grant were deemed more beneficial than the denial of it. Respite to the debtor is, indeed, so much delay to the creditor; but delay to the one may be a less evil than ruin to the other.

Where, besides the creditor by whom the demand has been made, other creditors remained unsatisfied, all of them being called in, a *composition* would be made among them, they appearing in person, as far as needful, under the direction of the judge: the effects would be divided among those to whom the shares were due, instead of a fellowship, consisting of attorneys, counsel, bankruptcy commissioners, judiciary functionaries of various sorts, and their universal patron, by whom the seals are put to the universal system of plunderage.

X. *Device the Tenth.—Mischievous transference and bandying of suits.*

When justice is the object, cases of necessity excepted, in whatsoever judicatory a suit is begun, in that same is it continued and ended.

Where fees are the object, it is without any such necessity or use, transferred of course, from one judicatory to another: where, after transference, it does *not* return to the judicatory from whence it went, say *transference;* where it *does* return, say *bandying*.

Appeal is not here in question. In case of appeal, a suit is not, without special cause, sent off from one judicatory to another: in the case here in question, it is without any cause.

Instances of cases in which justice is the object,

are afforded by one of the two classes of the cases in which jurisdiction is given to justices of the peace, acting singly.

Preparatory and *definitive*, by these two appellatives let them be distinguished: *preparatory*, where, from the judicatory in which it originated, a suit, to receive its termination, must be transferred to some other: *definitive*, when it is in the originating judicatory that the suit is not only begun, but continued and ended. To the class of cases in which the jurisdiction is definitive belong those in which justice is the object.

In the preservation of the practice, not in the invention and creation of it, consists, in this case, the device.

First, as to the simple transference. In the case in which the jurisdiction of a justice of the peace is of the preparatory kind,—from his judicatory, according to the place in which the suit originates, the nature of the case, and the gravity of the punishment, it is transferred to one of four others.

1. If in London and Middlesex, in the grave cases to the Old Bailey.

2. If in the country, in these same cases, as also in the lighter ones, to the assizes.

3. In the metropolis, as above, in some cases to the assizes, in others to the general sessions of the justices of the peace.

4. In the metropolis, in the lightest cases, to the sittings before, in and after, term in the King's Bench.

In its way to each of these ultimate or penultimate judicatories, if it has arrived at its destination, it has been strained through that seat and instrument of secresy, partiality, and irresponsible despotism, the grand jury.

Evidence, time, and money: of all these valuable articles, loss, in vast and incalculable abundance, is the consequence.

In all these instances, the case is, in one degree or other, a penal one.

For a faint conception of all these losses, and of the useless and mischievous complication by which they are effected, take now that state of things which, in respect of the evidence, is most simple, and which, at the same time, is not unfrequently exemplified.

Percipient witness to the transaction but one: circumstantial evidence, none. Suppose the originating judicatory aptly constituted, and appeal allowed; what, in this case, should hinder the suit from being ended where it began?

A duty that might be imposed on the judge as upon the justice of peace it is imposed,—is that of causing to be set down every syllable of the evidence. This done, why should it not be made thereupon his duty to pronounce judgment, and in case of conviction, give execution and effect to it? What, (says somebody) if death were the consequence? Answer—O yes: though death were the consequence: provided always, that, in every case, appeal were allowed: appeal to a judge with jury, in cases to which the powers of a jury were deemed applicable.

Is this the course? No. From the justice of the peace it must go to a grand jury: from the grand jury, if not sunk in that dark pit, it must go to one or other of the four judicatories abovementioned.

Three times over must the tale of this percipient and narrating witness be told. Here then, in every case, is the labour, expense, and compli-

cation of two appeals, without the benefit of one. Were appeal instituted, it would no otherwise be allowed than upon grounds deemed sufficient, and in so far as it was deemed subservient to justice, say, in one word, of *use*. On the other hand, under the existing system, there is the complication of appeal organized and established in all cases, including those in which the operation is without ground, and without use.

Were the matter of the first narrative preserved, it might serve as a check and a security for the correctness of the second: and so the first and a second for the correctness of the third. No: neither of the second nor of the first is such use, or any use, made.

Moreover, for deperition of the evidence by design or accident—by purchase, emigration, sickness, or death, all this time, all these chances, are allowed.

I. Here then is loss the first: loss of *evidence*.

II. Now for loss of *time*.

1. Old Bailey. In the year, sessions 8. Average duration of each session, days 10: time lost, days, from 1 to .

11. King's Bench. Terms 4: sittings, before, in, and after term, as many. Times of trial, these same sittings. Time thereby lost—days, from 1 to .

111. Assizes. In the year, days of sitting in most counties, 2: in some, but one: in each town, from 1 to 3: days lost, from 1 to 182: in some cases, no less than 364.

IV. General sessions of the justices of the peace. In the year, sittings 4. Times of trial, these same sittings, days of sitting, upon an average, : Time lost, days from 1 to .

III. Now for loss in *money*. Only for remembrance sake can this item be set down: to determination it bids defiance.

So as to the loss in the two other above-mentioned shapes: from anything that could be done towards filling up the above blanks, the benefit would not pay for the burthen. According to his opportunities, every person, whose regard for human suffering suffices for the motive, will perform the operation for himself.

So much for simple transference: now for *vibration*, or say *bandying:* that is to say—after sending the suit from the originating judicatory to another, regularly bringing it back to the first. Neither was this branch of the device part and parcel of the original system. In process of time, two causes concurred in the production of the effect.

Cause the first.—As opulence, and with it the possibility of finding the purchase money for the chance for justice received increase, the local judicatories being killed, business kept flowing in to greater amount than King's Bench and Common Pleas together knew what to do with, in the compass of that portion of the year, which, under the name of *term-time*, had originally been allotted to it. Cause the second.—At the same time, the burthen attached to jury service, borne as it was twice in the year by men in dozens from each county, travelling for King's Bench suits in the train of the King during his rambles, or though it were only to a fixt place, such as London, from Cumberland or Cornwall, was such as, in the aggregate, became intolerable.

Hence came the *circuit* system: that system, by which part of the time, originally under the name of *vacation*, consecrated to idleness, was given up

to business, and, to a correspondent amount, *ease* exchanged for *fees*: judges being detached from the Westminster-hall courts, to save to jurymen a more or less considerable proportion, of the time and money, necessary to be expended on journies and demurrage.

As to the local judicatories thus extinguished, they sat every day of the 365: at least, nothing was there to hinder these days. Was the equivalent allowed for the 365, by the circuit-system principle, the allotment of a finite and minute quantity of time for an infinite quantity of business? When it is conducive to public health that, by medical men, wounds shall be dressed, teeth drawn, and limbs amputated at full gallop,—the circuit mode of trying causes, at like speed, will be conducive to justice.

Under the technical system, if ever in a case such as this, evil receives alleviation, it is from some other evil. It is from the device by which mechanical operation is substituted to mental: it is from this, that the evil produced by the bandying device, by which a suit is dealt with as if it were a shuttlecock, may be seen to receive such palliative as it is susceptible of.

That the series of the proceedings of which a suit is constituted, should be divided between judicatories more than one, is a source of misdecision, for which, in some cases indeed, necessity affords even a justification, but for which nothing short of necessity can afford so much as an excuse. Why? because in this case, the judge, on whose judgment the fate of the suit depends, has had before him no more than a part of the matter of which the ground of that judgment ought to be composed.

In the case of circuit business, this source of misdecision is purposely established and universalised. In every one of the three common law courts, in the metropolis it is that the suit takes its commencement, and with it the history of it, called the *record*. When, on the circuit, the detachment of judges, sent from Westminster-hall in couples, make their progress through the counties, with them travel these same records, and so again on their return: whereupon, they are reconveyed to the Offices, from whence they issue: of this practice of dealing with a record as with a shuttlecock, what is the use? None whatever: always excepted, the univeral use: serving as a pretence for fees: a shuttlecock is lighter than a record, and would, in these cases, be an advantageous substitute to it.

Of the whole proceedings, in each suit the essential part (need it be said?) is the evidence. Well then; of each record this same evidence constituted, (one might have supposed) the principal part. Well then; does it compose the principal part? No: nor so much as any part, whatever: a mixture of immaterial truth and absurd lies: such is the matter of which the principal part is composed.

As to the evidence, instead of a compleat written designation of everything relevant that has been said, traced by a responsible hand, the judge takes or does not take what he calls his notes; which notes are of course in quality as well as quantity whatever it pleased him to make them: on a motion for a new trial, but not otherwise, they are read. Now then for the *palliative*. It consists in this: setting aside occurrences, which are purely accidental, and which happily

do not take place,—perhaps in one suit out of twenty,—no more than one judge is there in truth, whose mind is, in any part of the proceedings applied to the matter of the suit. This is the judge, under whose direction has been performed the elicitation of the evidence.

Auspices were what a Roman emperor contributed and received admiration and praise for, when a victory was gained a thousand miles off: auspices are what the judges of a Westminster-hall judicatory contribute to a suit begun and ended in their courts.

When from the circuit the record is brought back by the judge, under whose direction the evidence has been elicited to the Westminster-hall court in the office of which the suit and the record took the commencement, the form by which judgment is pronounced receives the hand-writing of the chief justice, as in his sleep a plate of glass would his breath, without his knowing it; and thereupon, if the judgment be in favour of the plaintiff's side, and money is to be raised in satisfaction of a debt pronounced by the judgment to be due, is sent down ordinarily to the county, to which the record's useless journey had been made, an order called a writ of *fieri facias*, by which a functionary stiled the *sheriff* of the county, is required to raise the money by sale of the defendant's goods, and remit it to the office of the court, in which the suit was commenced.

When it was at Westminster, and thence in the very justice chamber in which the suit took its commencement, that the elicitation of the evidence belonging to it had to be performed, here was no journey for the record to perform: next to none when in the city of London, at less than two

miles distance. A trial performed at a county town in the course of a circuit was said to be performed at the assizes: a trial performed in Westminster in London, as above, was said to be performed at nisi prius: *nisi prius*, when interpreted, is *unless before:* and with that interpretation your petitioners choose to leave the matter, rather than attempt to lead the Honorable House through the labyrinth, through which, often, beginning at nonsense, the mind must make its way, ere it arrives at common sense.

But the county at which the elicitation of the evidence is to be performed—what shall that county be? Under the natural system, there would be variety, but without difficulty: without difficulty, because without decision: without decision, because by the judges, unfee-fed as they would be, nothing would be to be got by it.

Under the existing technical system chicane is busy: difficulty proportionably abundant. Hereupon, comes a sort of a thing called a *venue:* question, shall it be changed or remain unchanged? in plain English, the county in which the trial is performed—shall it be that which, by means of the appropriate gibberish, the plaintiff's attorney had fixt upon for this purpose.

Such is the stuff, out of which, under the technical system, what is called *science* is composed. If a suit were sent to be tried at the *venue*, and the motion were for change of *unless before*, the profundity of the science would be rendered still more profound.

One thing is throughout intelligible: at the bottom of everything are fees: at the bottom of the *unless before*, are fees: at the bottom of the changeable *venue* are fees: the greater the quan-

tity of parchment in the shape of a record, the greater the quantity of gold in the shape of fees, the greater the patience of us his Majesty's subjects, the more cruelly will every one of us be trod upon by every dishonest man who is richer than he, and by the men to whom, under the name of judges, we are delivered over to be tormented, the more insatiably squeezed for fees.

Particular case just alluded to that of a motion for a new trial. Judges of the three Westminster-hall common law courts, 12: before one alone it is that the trial has been performed. Two to one, therefore, is the chance that the abovementioned palliative, such as it is, will not have had place: for, upon the notes taken by the one judge, at the assizes in the county, or *nisi prius* at the metropolis, is grounded the decision of the four judges in Westminster-hall, on the question whether the new trial shall or shall not have place.

Under natural procedure, supposing a new trial, it might, instead of the next quarter or half year, take place the next day; and thus before the witnesses were dispersed.

Let not mistake be made. Absolutely considered, neither on simple transference nor yet on bandying can condemnation be passed, consistently with justice. Suppose two hundred local judicatories, having each of them in its territory a witness or a party, whose testimony was needful in one and the same suit. On such case, transference to some one, or bandying the suit to and back from each, might perhaps be productive of less delay and expense, than the fetching of them all to the originating judicatory.

The grievance consists in the performance of both operations, conjointly, and as a matter of

course, where there is neither need nor use. Sending, for example, on the strength of the word *venue*, suit, parties, witnesses, and record to Cornwall or Cumberland, when all are within a stone's throw of the seat of ultimate judicature.

XI.—*Device the eleventh. Decision on grounds avowedly foreign to the merits;* or say, decision otherwise than on the merits; or, more shortly, decision not on the merits.

Under all the devices, as yet brought to view, the sinister design has shrunk from observation, and with but too much success sought something of a veil for the concealment of it. But by him, by whom for the designation of the decision, pronounced or sought by him, this phrase was employed, all veils were cast aside, and the principle acted upon, avowed and exposed to all eyes, in all its deformity and foul nakedness. To all eyes? yes: but these eyes—whose were they? Under one or other of two descriptions they all come: eyes of the sharers in the guilt, with its profit, or eyes—which, by the devices that have been brought to view, they had succeeded in blinding, concealing from them, the cause, and the authors, of the suffering they were experiencing all the while. But for this blindness, insurrection would have been universal, the yoke of lawyer-craft shaken off, all the other devices rendered useless, and universal abhorrence, not to speak of condign punishment, the only ultimate fruit reaped from so much ill-spent labour by the authors.

"To decide, sometimes according, sometimes not according to the merit—such has been my habit, such continues my determination." What a profession this for a judge! In what other class of men could any instance of such openly avowed

depravity ever have been found? In what other part of the official establishment any such avowal of accomplished inaptitude? Look to the military. My design is sometimes to obey my commanding officer, sometimes to disobey him. Look to the financial. My design is sometimes to hand over to the Treasury the money I have collected; sometimes to put it into my own pocket. Look to the medical profession. My design is sometimes to cure my patients, sometimes to kill them. In the soldier, the tax-collector, and the surgeon, if such there could be, by whom respectively such language could be held, would be seen the exact parallel of the judge, who avowedly and purposely decides otherwise than according to the merits.

In painting the deformity of this practice, can any power of exaggeration go beyond the plain exposition of the simple truth?

In what instance, on what occasion, did the Honorable House ever profess to make a decision, not in accordance with the merits? On the occasion of any dispute between child and child, between servant and servant, did ever any member of a family, non-lawyer, or even lawyer, ever declare himself thus to decide? The essential word *merits*, being a word over the import of which something of a cloud may on this occasion appear to hang, whatsoever may be necessary we humbly hope will not be regarded as misemployed, while employed in dissipating it.

To have a clear view of the sort of operation meant by a deciding *not according* to the merits, a man must first have a correspondently clear view of the sort of operation meant by a deciding *according* to the merits.

Taken in its all-embracing description, a decision *according* to the merits, is in every case a decision by which, on the occasion in question, execution and effect is given to the law: to the really declared will of the legislature in the case of statute law: to the imagined will of the imagined legislature in the case of *common law*, in that sense in which it is synonymous to judge-made law.

In the sort of case called a *civil* case, that which is done by a decision according to the merits, is giving to the plaintiff the benefit claimed by his demand, if so it be that his individual case is contained in the species of case in which it has been declared by the law that, by every individual, whose case is included in that same species of case, a benefit of the sort so designated shall, on his demand, be put in possession by the appropriate judge: thus giving to the plaintiff the benefit in question, if his case is within that same species of case, and thereby of necessity subjecting the defendant to the correspondent burthen: refusing the benefit to the plaintiff if his case, as above, is *not* within the species of case, and thereby keeping the defendant clear and exempt from the correspondent burthen.

In the sort of case called a *penal* case, a decision, according to the merits, is a decision by which the defendant, if guilty, is pronounced guilty: if not guilty, not guilty.

On each occasion, two questions, essentially different, how intimately soever connected, come necessarily under consideration: the question of *law* and the question of *fact*. But of this distinction, for the present purpose, nothing further will

require to be said. Only that it may be seen not to have been overlooked, is this short mention made of it.

Such being the description of a decision according to the merits, now, in exact contrast to it, comes the description of a decision not according to the merits.

In its general description, as above, a decision according to the merits being a decision by which, on the occasion in question, execution and effect is given to the law: in the case of a decision not according to the merits, on the occasion in question, execution and effect is *not* given to the law.

In a civil case, a decision according to the merits was a decision, by which the plaintiff was put in possession of the benefit in question, as above: a decision not according to the merits, is accordingly a decision, by which, in that same case, the refusal, express or virtual, is made so to put him in possession, as above.

In a penal case, a decision according to the merits, was a decision by which, if the defendant was guilty, he was pronounced guilty: if not guilty, not guilty: a decision not according to the merits, is accordingly a decision by which, if the defendant was guilty, he is pronounced not guilty: if not guilty, guilty.

Here then are four distinguishable forms of injustice: and by every decision not according to the merits in some one or more of these forms, is injustice committed.

Moreover, in no other than in one or other of these same four forms, by a judge acting as such, can injustice be committed: into one or more of

them will be found resolvable every decision to which, with propriety, injustice, or say contrariety to justice, can be imputed.

Of the injustice committed by means of this device, the prime instrument is the word *nullification*, with the other words, nouns substantive, nouns adjective and verbs connected with it, and the phrases in the composition of which they have place: null, void, null and void, bad, error, irregularity, flaw, vacate, avoid, avoidance, quash, set aside, annul, nullify, fatal, quirk, quibble.

Compared with this of nullification all other modes put together, in which injustice is capable of being committed by decisions not according to the merits, the importance would be found inconsiderable: the burthen of research and examination would not, on this occasion, be paid for by the benefit of the acquisition.

In the group, composed of these four great aggregates, are united four elementary ingredients, by universal consent acknowledged in the character of so many modifications of injustice; these are punishment *ex-post-facto*, or as some stile it, *retro-active*—disappointment of established expectations, compleat arbitrariness, mis-seated punishment. Of retro-active punishment the so flagrant and incontestable injustice is an established and frequently drawn-upon source of condemnation: and this even under statute law, under which it is so rarely inflicted, even by the worst constituted and worst exercised governments.

In the case of judge-made law, this retro-activity is of the very essence of this species of law, as contradistinguished from statute law: and this even when the decision is on the merits.

But, when *not* on the merits, it stands upon ground very different from what it does when on the merits: ground widely different and much worse.

When *on the merits*, there is always some analogy between the state of the case on the occasion of the decision in question, and the state of the case on some anterior decision or decisions, to which reference is made: and those to which the analogy it bears is looked upon as being the closest, are uniformly those which are looked out for in preference. How constantly opposite in this respect is the case where the only grounds on which the decision is formed, are such as avowedly have nothing to do with the merits!—bear no analogy whatsoever to the merits!

As to punishment, the name is on this occasion employed, because whether or no the suffering produced is produced under the name of punishment, such upon the individual who suffers is the effect.

Now as to disappointment. Of an occurrence from which expectation of benefit in any shape experiences disappointment, pain, in some degree or other, is a constantly attached consequence: in the exclusion put upon this pain may be seen the sole but perfectly sufficient immediate reason for giving to every man whatsoever is deemed his own, instead of suffering another to get or keep possession of it. No otherwise than by statute law, and in proportion to the extent of it, can this so desirable exclusion be effected: by statute law pre-established, fore-known and fore-notified. Of judge-made law, the general incapacity of conveying this same so desirable information is the essential and distinctive characteristic. But, on

every occasion, as above, even under judge-made law, it is more or less extensively an object of endeavour to confine this sort of uneasy sensation within as narrow bounds as may be; to exclude it altogether, if possible; and at any rate, on each occasion, to render the probability of its having place as small as possible. On the contrary, in the case of a decision not on the merits, the probability of the existence of evil in this shape is at its maximum: in a word, it coincides with certainty. For, unless where, in the individual case in question, corruption, or some uncommon distortion of the intellectual frame, on the part of the judge, is supposed or suspected to have place, by whom is it that the existence of any such phenomenon can naturally be apprehended, as that of a judge so lost to all sense of shame, as to stand forth a self-declared perpetrator of injustice?

Now then by the practice of deciding on grounds palpably foreign to the merits, has power to this degree arbitrary been actually established in themselves by English judges. In general, they are expected to tread in one another's steps: and in the degree, in which this so indispensable habit is conformed to, depends altogether such feeble and even vacillating degree of security, as it is in the power of judge-made law to afford. But when at length the eyes of the public have to a certain degree opened, the evil which has been the result of their thus treading in one another's steps in some cases of quibble, has become so palpable and grossly mischievous—giving impunity, for example, to murderers, because some word has been miswritten or left unwritten by somebody,—when things have come to this pass, not only allowance but applause has been bestowed on a departure.

Then it is that the judge finds himself at perfect liberty to give, or to refuse impunity to the murderer, at pleasure: if he refuses it, liberality is his word: if he gives it, *stare decisis*.

3. Now as to the complete arbitrariness. Arbitrary to a degree of perfection, if in any case, is the power of a judge in a case in which, without danger either of punishment at the hands of the law, or so much as censure at the hands of public opinion, he can give success to plaintiff or to defendant, according as he happens to feel inclined. Such is the case where, within his reach, he sees two opposite sources of decision, from either of which he can draw at pleasure: one which will give success to the plaintiff's, the other to the defendant's. A sort of vase has been seen, from which, at command, wine, either of one colour or another, has been made to flow. From this emblem, the name of the *double fountain* principle has been given; to the principle on which, by this means, and in this shape, a power, which to the extent of it is so completely arbitrary, has been established.

To such a pitch of perfection has the exercise of power in this shape been carried, that of late days a judge has been seen scouting the quibble one day, giving effect to it the next: to what cause such inconsistency should be ascribed, whether to corruption, or to that wrong-headedness which, to so great an extent, judge-made law cannot fail to propagate, it is not possible to determine: to-day it is probably wrong-headedness: to-morrow it may be the other cause.

While decision on any other ground than the merits is allowed of, in any case, thus the matter must continue: and for the extirpation of this

enormity, nothing short of an entire system of procedure can suffice.

4. Lastly, as to *mis-seated punishment*. Delinquency, such as it is, being imputed to one person, not on him, but on some other—and that other one to whom no delinquency in any shape is imputed, is the burthen of suffering imposed. The attorney (say of the plaintiff) is supposed to have written some word wrong: for this impropriety, real or pretended, if real, intended or unintended, his client, the plaintiff, is made to lose his cause. If the case be of the number of those in which, in conjunction with the individual, the condition of the public at large is considered as suffering, as in the case of robbery and murder, of those in which the evil diffuses itself through the public at large, without infringing on any one individual more than another, as in the case of an offence affecting the revenue: in either of these cases, it is the public that thus, for the act of the individual, is made to suffer: to the guilty individual impunity is thus dealt out: to the not guilty individual, or public, groundless sufferings.

In the expression by which, upon any operation or instrument, *nullification* is pronounced, employment given to a sort of fiction is involved: one operation which has been performed is spoken of as if it had not been performed: the instrument which has been brought into existence is spoken of as not having had existence: at any rate, things are put, and professed to be put, into the state in which they would have been, had no such operation, no such instrument, had place. Amidst instances of mendacity so much more flagrant, scarcely would such a one as this have been worth noticing: but for exemplification and explanation

of the effects, this mention of it may be not without its use. An offender for example, has been brought to trial, and conviction has ensued: in the instrument of accusation, (say the *indictment*) one of those *flaws*, manufactured perhaps for the purpose, has been discovered: in consequence of the observation, arrest of judgment as the phrase is, has been pronounced. What is the consequence? Whatever *has* been done is to be considered as if it had *not* been done: information which has been elicited, is to be considered as not having been elicited: evidence, by which the fact of the delinquency has been put completely out of doubt, has been elicited, and with perfect accuracy been committed to writing: it is to be considered as never having had existence.

In civil cases, the effect is the same—the same convenient extinction of evidence has place, when a new trial has been granted and brought on: though, in this case not being needed, no such word as *nullification*, or any of its synonyms, as above, is employed.

Peremptory and *dilatory:* by these two words are designated the two so widely different effects produced, in different cases by nullification. Case in which the triumph of injustice is most compleat, that in which the effect is peremptory, or say definitive, because a word has been mis-spelt by a copying clerk, a convicted murderer, for example, walks out of court, under the eyes of his deliverer and accessary after the fact—the quibble-sanctioning judge, to commit ulterior murders. Throughout the whole field of penal law, of nullification pronounced on the proceedings on grounds foreign to the merits, this, according to the general rule, and expressed in the language of Roman law by

the words *non bis in idem*, is the effect. Needlessly promotive of guilt as this rule would be in any case, it would not be near so amply so as it is, were it not for the blind fixation principle, applied to days, as above. Endless is the variety of accidents—endless the variety of cnntrivances, by any one of which a necessary witness may be kept from being forthcoming at the day and within the hour prescribed; while on a circuit, the judges, with their et ceteras, are circumgirating, as if by steam, on a wheel without a drag.

Humanity, that humanity which has penny wisdom for its counsellor, that humanity which can see the one object under its nose, but not the hundred of the like objects at a few rods distance, applauds the impunity given in this case: consistency would, if listened to, extend the impunity to all other cases: then would society fall to pieces: and in Blackstone's phrase, everything would be as it should be.

All this supposes the case to be of the number of those called *criminal* or *penal:* for, to these words substitute the word *civil,* the eyes of humanity are closed. In every case called *civil*, a new trial may be granted: in cases called *penal*, not: in the case called *civil*, the loss a defendant stands exposed to, may amount to pounds, by tens of thousands a year: in the case called *penal*, it may not amount to ten shillings; but cases called civil may, on revision, be found pregnant with fees to any amount: cases called penal are comparatively barren.

When the immediate effect is no more than dilatory, the evil is not so *complete*, nor in every part *certain*. But, to a more or less considerable extent, evil has place in every such case—evil by

delay; and delay of justice is, so long as it lasts, denial of justice: add to this, evil by expense of the repetition:—that evil, out of which cometh forth that same relative good—Judge and Co.'s profit—the contemplation of which constituted the motive and efficient cause by which the arrangement was produced.

Add now the effect of the instruments of regularly organised delay called *terms* and *circuits*, combined with that of the *blind fixation* principle, applied to *days*. Now, in the case of a new trial, comes an interval, in some cases, of half a year, in others of a whole year, interposed between the original series of proceedings, and the repetitional proceedings, if granted. In this state of things, to a prodigious extent, the dilatory operation of the virtual nullification put upon the original set of proceedings becomes in effect peremptory and conclusive. A necessary witness dies, goes off of himself to the antipodes, or is bought off: of the suitors, at whose charge, in case of nullification, the quibble has been made to operate, or without need of nullification the necessary piece of evidence has been kept out of the way, the purse or the spirits have become exhausted. As often as this has place, the dilatory effect, though in name and outward appearance less pernicious than the peremptory, is in reality much more so: the expected remedy is extinguished: and to the expense and vexation attached to the pursuit of it, a fresh quantity is added.

Such is the advantage which, by the so elaborately and successfully organized system, is given to dishonesty when conjoined with opulence, that, in many instances, to the purpose of the preponderantly opulent depredator or oppressor by whom

the depth of his destined victim's purse has been sounded, so far as regards ultimate success, the difference between the peremptory and the dilatory effect of nullification may be made to vanish.

XII.—*Device the Twelfth.—Juries subdued and subjugated.*

Not at the period here in question was this exploit hatched: juries, it seems probable, were not at that time in existence. But it was at that period that the foundation was laid, of the power by which this subjugation was accomplished: and the only use of the inquiry being how the yoke imposed on the people by Judge and Co. may be shaken off—a yoke of which this forms no inconsiderable a portion, a topic so important could not be left untouched.

The origin of the jury institution is lost in the clouds of primæval barbarism: inference must here be called in to do the work of narrative. That which inference suggests is this: Of some greater number, twelve or any other determinate number could not but have been a sort of committee. To the eyes of the historian not uniformly distinguishable was the entire body and the committee. When the one supreme criminal judicatory—the sometimes metropolitan, sometimes travelling judicatory—was instituted, then, all over the country, were extinguished the small territorial and adequately numerous local judicatories, in which the inhabitants in general took that part, which, scarcely in those rude ages, could be well defined, and if ever so well then defined, could not now be determined and stated. What was to be done? Even under the then existing thraldom, subversion, completed at one explosion, might have been too shocking to

be endurable. "Come to me, wherever I am, and sit under me, as you do now under your several judges. Come to me: I do not say all of you, for in that case all production would be at a stand—but a part of the number selected from the whole: in a word, a committee; and let the number of it be twelve." When from one of these small judicatories a suit was first called up to the one high and great one, something to this effect must, it should seem, have been said. The shorter the journey, the less burthensome the duty. Whether this be more or less burthensome, the more important the occasion, the more plausible the excuse for the imposition of that same duty. Thus it was, that practice might make its way by degrees. As to the number, why twelve? Answer—Twelve was the number of the apostles: in favour of no other number could so cogent, unanswerable a reason be assigned.

Be this as it may, in the very nature of the case, never could juries have been altogether acceptable associates to judges. How should they, any more than independent Houses of Commons to Kings? Whatsoever was the disposition of the judge, partial or impartial, crooked or upright, proportioned to the share they took in the business, most frequently by intellectual inaptitude, but sometimes by intellectual aptitude, sometimes by moral aptitude, they would be troublesome. Act they could not without being so. By their mere existence a troublesome duty was imposed upon the judge: the duty of giving something in the shape of a reason for the course prescribed by him.

Here then, on each occasion, on the neck of the judge was a yoke, which, if it could not be shaken off, was to be rendered as light as possible. In

case of non-compliance, it might by nullification, as hath been seen, be got rid of. But nullification, as hath also been seen, did but half the business. True it is, that when applied to cases called *civil*, it could always prevent a well-grounded demand from taking effect; but it could not so constantly give effect to an ungrounded one. Applied to *penal* cases, it could at pleasure give impunity to crime; but especially in capital and other highly penal cases, scarcely of itself could it be made to subject innocence to punishment.

What remained applicable was a compound of intimidation and delusion: intimidation, applied to the will; delusion, to the understanding.

Of the intimidation employed, the one word *attaint*, will serve to bring to view a specimen. Persons, all twelve, imprisoned; moveables, all forfeited; dwellings, all laid low; habitations, lands, completely devastated; with et ceteras upon et ceteras. Maleficence must have been drunk when it came out with this Pandora's box: actual cautery applied, as often as a flea-bite was to be cured. Down to the present hour, this is law: continued such by judge-made law. In the course of a few centuries, statute law added a few trifles, that these serious things might remain unaffected. Statute law is repealable: common law unrepealable. Parliaments are allowed to correct their own errors: judges, under the name of the tyrant phantom, remain irresistible, uncontrolable, and incorrigible. No otherwise, it is true, than by compliance on the part of twice the number, could vengeance be taken for the non-compliance of the twelve. But the instances first chosen for this infliction would naturally be those in which, on the part of the sufferers, the delinquency had been

least questionable. At any rate, upon Judge and Co. would infliction in such sort depend, that, of non-compliance, *attaint* could scarcely fail to present itself as a more or less probable consequence.

Of an infliction thus atrocious, the frequency, as it presents itself in the books, is perfectly astounding to a reflecting mind. No otherwise than by attaint, could the effect produced in these days by new trial, be produced in those. As often as a new trial is granted now, conceive the Pandora's box opened there.

Note well the efficiency of the instrument. Like the fabled razors, it performs the work of itself, without need of a hand to guide it. As it is with corruption, so is it with intimidation. To produce the effect, neither discourse nor expression of will in any other shape, is necessary: for the production of the effect, relative situation is perfectly sufficient. Where the intimidation was inapplicable, afterwards when at length the stream of civilization had washed it away altogether,—remained, as the only instruments applicable, arrogance and cajolery. Of the two instruments, arrogance was, of course, to the operator, the more acceptable. The use of it presented no great difficulty. "The law (quoth the judge) is so and so." So far the judge, but what law? No law was there in the case. Who made it? The law—meaning that portion of it to which he gave the force of law—it was he who made it; made it out of his own head, made it for his own purpose, whatsoever that purpose happened to be.

Take for example libel law. A libel? What is it? Answer—If I am a judge, any piece of printed paper, it would be agreeable to me to punish the man for. Is he a man I choose to punish? I make

it a libel: is he a man I choose not to punish? I make it a non-libel. But is it possible that, to a man in power, it should be agreeable to leave unpunished any individual audacious enough to say anything otherwise than agreeable to a man in power? O yes; it is just possible. Witness Morning Chronicle in the days of *Perry*, and Lord Chief Justice Ellenborough.

Now suppose a *code* in existence. Juries are now emancipated. Judges in effect now: no longer dupes; no longer tools; and, by the shackles imposed on the mind, made slaves. Judges in effect now, because ennobled and qualified so to be. The law (say they) is so and so: how should it be otherwise? Not be what they thus say it is? The book is opened: there the passage is—they see it. More effectually learned would be the least learned juryman in such a state of things, than, under the existing system, the most learned judge.

To the *existing* system apply (be it remembered) these remarks: not to an improved system, under which judges would be made responsible, and appeals to a superior judicatory effectual, as well as the appeal to public opinion, strengthened by extension given to publication: under such a system, greater might be the power reposed in the experienced, less in the unexperienced hands.

"Thus stands the law!" Under the existing system, when a declaration to this effect is made by a judge, from what set of men, in the situation of jurymen, can non-compliance, how necessary soever to justice, be ordinarily expected? In this case, that being assumed as true, which, in every common law case, is so opposite to true—that is to say, the existence of the law in question—to the judge must this same law be known, if to any

body; as to these his unlearned pupils, to them it is completely unknown: so the inward consciousness of each man of them testifies. With the law, which thus, at the very moment of its being made, is revealed to them, begins and ends their knowledge. In such a state of things, so effectually, by the consciousness of their own ignorance, were they and are they blinded, their appointed guides may, to any degree be blind, without being seen by them to be so. Under these circumstances, what but blind compliance could then be—aye, or can now be—the general practice? What exceptions there are, are such as are formed by here and there a rare occurrence, operating upon a rarely exemplified set of dispositions.

Of the acquitted decapitator, mention has been made above. If, by a union of past absurdity and present arrogance, a jury can be brought to this, to what is it they can not be brought? But, in that case, how much is to be ascribed to judge's influence, how much to jurymen's abhorrence of death in the character of a punishment, can not be affirmed with certainty: and so long as the punishment is death, impunity will, every day, be approaching nearer and nearer to the being every day's practice.

XIII.—*Device the Thirteenth.—Jurisdiction where it should be entire, split and spliced.*

Jurisdiction has two fields—the *local* and the *logical:* the *local*, or say *territorial*, divided into *tracts* of *territory*; the logical, divided into *sorts of cases*. In the local field, that which the interests of justice require is, as hath been seen, *multiplicity;* in the logical field, as will be seen, *unity*. So much for reason: now for practice. Where, by

the interests of justice, multiplicity was required, the interest of Judge and Co. established, as has been seen, the *unity:* where, by the interests of justice, unity was and is required, the opposite interest of judicature, that is to say, that same sinister interest will now be seen establishing *multiplicity*.

From the expression *jurisdiction split*, let it not be conceived, as if at the initial point of time in question, the field of legislation was, in its whole extent, covered as it were by one large block; and that, at different times thereafter, by the introduction of wedges or otherwise, the block was broken into the existing splinters, connected together, as they may be seen to be, by the conjunct sinister interest. The case is, that it is by degrees, as will be seen, that the aggregate composed of the splinters has been brought into its present so commodious state: namely, in some instances by fissure, in other instances by the gradual addition of portions of new matter *spliced* to the older. *Splitting* and *splicing*—by the union of these two operations has the actual aggregate result been brought into existence.

Matter of the aggregate this. Of the substantive branch of law different masses, three or four: and, for giving execution and effect to them, more than twice as many of the matter of the adjective or say procedure branch of law; constituted every one of them, chiefly of the fictitious, or say judge-made sort; with only here and there a patch of real law—of legislature-made law—stuck in.

In the *keeping* of these portions of matter in the hands of different sets of judges, not in the *originally placing* them in these or any other separate hands, consists, at present, the sinister practice—

the *device:* in the union of them, in each territory, in one and the same hand, the sole remedy.

As to the *splitting*, in some instances, the operation, by which it was effected, was performed at one stroke; that is to say by one statute: call the mode, in this case, the *all-at-once* or *declared* mode; in other instances, silently, gradually, and imperceptibly: call it, in this case, the *undeclared* or *gradual* mode.

So likewise, as to the *splicing*.

Short description of the modes of operation in the two processes this.

Original stock or block, the grand judicial authority, instituted by William the Conqueror, and stiled the *Aula Regis:* Anglicé, the *King's-hall* or *court*.

1. Splinter the first, court *Christian*, alias *Spiritual*, alias *Ecclesiastical:* species of operation, difficult to say whether the splitting or the splicing. Mode of operation, at any rate, the *gradual*. By the terror of punishment in the future life, it acquired as will be seen, powers of legislation and judicature in the present.

2. Splinter the second, courts of *Exchequer*, stock or block, as above, the *Aula Regis* jurisdiction. Out of the *administrative* authority, now called *the Receipt of the Exchequer*, instituted for the collection of the revenue, grew the *judicative*, called the court of Exchequer. Where contestation has place, if and in so far as professional assistants are called in, *administration* becomes *judicature*. Mode of operation, gradual; members of the court, a portion of those of the *Aula Regis*.

3. Splinter the third, chancellor's jurisdiction. Stock or block, the Aula Regis jurisdiction. This functionary, decidedly a member of the Aula Regis,

officiated therein as Secretary of State: and, at the same time, his being the office from which issued the instruments, still stiled *original writs*— instruments, by which commencement was given to so many sorts of suits, exercised thereby, in subordination to the legislative authority of the monarch, a sort of unperceived, but not the less real authority of the same kind. Species of operation, the splitting: mode, the gradual.

4. Splinter the fourth, jurisdiction of the court of Common Pleas. Stock or block, the jurisdiction of the Grand Justiciary. Species of operation, the *splitting*. Mode, the *all-at-once* mode. Splitting instrument, *Magna Charta:* remnant of the original stock or block, the court of King's Bench. Business now stiled *civil*, allotted to the Common Pleas; business now stiled *criminal* or *penal*, reserved to the King's Bench: also, either reserved by original institution, or acquired by encroachment, the appellate's superiority over the Common Pleas.

5. Splinter the fifth, equity jurisdiction of the Chancellor's court. Stock or block, the aggregate of this same functionary's authority. Species of operation, splicing: mode silent, unperceived, gradual. Remnants, the common law business now stiled the *Petty-bag* jurisdiction: petty in name, petty in bulk and nature.

6. Splinter the sixth, equity jurisdiction of the court of Exchequer. Stock or block, the common law business of that same court. Species of operation, splicing. Mode unperceived, gradual: performed in imitation of the Chancellor's equity jurisdiction.

7. Splinter the seventh, Bankrupt Petition court. Stock or block, the chancery jurisdiction.

Species of operation, splicing. Mode, the all-at-once mode. Splicing instrument, the statute 34 and 35 Henry VIII. ch. 4.

8. Splinter the eighth, Insolvency court. Stock or block, again the chancery jurisdiction. Species of operation, splicing. Mode, the all-at-once mode. Splicing instrument, 53 Geo. III. ch. 102: Subsequentially applied instruments, 54 Geo. III. ch. 28, and 3 Geo. IV. ch. 123.

9. Splinter the ninth, jurisdiction of the justices of the peace acting collectively in general sessions. Stock or block, the King's Bench jurisdiction. Species of operation, splicing: mode, the *all-at-once* mode: splicing instrument, statute 1st, Edw. III. st. 2, ch. 16.

10. Splinter the tenth, jurisdiction of justices of the peace, acting collectively in not fewer than two at a time in petty sessions. Stock or block—original, the King's Bench jurisdiction, as above: immediate, the above-mentioned general sessions jurisdiction. Species of operation, splicing: splicing instruments, various consecutive statutes. On the part of each, mode of operation, the all-at-once mode: on the part of the aggregate, the most thoughtful, silent, or unperceived and gradual.

11. Splinter the eleventh, jurisdiction of justices of the peace, acting severally throughout the suit. Stock or block—original, the King's Bench jurisdiction: immediate, the general sessions jurisdiction, as above. Species of operation, mode of operation, and instrument, as above.

12. Splinter the twelfth, jurisdiction allotted to justices of the peace, acting severally, and exercising, at the outset of a suit, a fragment of

jurisdiction: the suit being, for its completion, transferred to some one of four other judicatories: as to which, see above, Device XI, *Needless transference and bandying:* stock or block—the King's Bench jurisdiction. Species of operation, splicing. Mode, the all-at-once mode. Splicing instrument, statute 1 and 2 Phil. and Mary, ch. 13.

13. Splinter the thirteenth, jurisdiction of small debt courts. Original stock or block, the *court of Requests*, in Westminster-hall, long since abolished. Species of operation, splicing: mode, in the instance of each, the all-at-once mode: splicing instruments, a multitude of statutes, each confining its operations to some narrow portion of territory.

Note, that in almost every one of these cases, the course taken for the ascertainment of the truth, in relation to the matter of fact, is different: as to this presently.

Ecclesiastical judicatories for maintenance of discipline among ecclesiastical functionaries:—military judicatories for maintenance of discipline among land-service military functionaries:—the like in relation to sea-service military functionaries. Admiralty prize courts: on the subject of these judicatories, the demand for explanation not being cogent, and room being deficient, the sole purpose of the mention here made of them is the apprehension lest, otherwise, they should be supposed to have been overlooked.

Mark here the chaos! Different branches, or say masses, of substantive law, spun out in this dark way by judge-made law, thus lamentably numerous! and for giving execution and effect to

them, to each a different mass of procedure, or say adjective law: masses framed in so many different modes, and upon different principles!

Single-justice courts, petty sessions courts, and small debt courts, the more entitled to remark, as affording, perhaps, the only instances in which judicial procedure has had for its main ends the ends of justice.

Essentially repugnant to the ends of justice (need it be said?) essentially repugnant, if anything can be—this system of disunion: proportionably subservient to the actual ends of judicature: hence the arrangement so recently employed in keeping it up: in particular, as between equity courts and common law courts.

Conducive to the ends of justice will this splitting and splicing work be said to be? Well then: here follow a few improvements, on the same principle. To the *bankruptcy* court, add a *stock-breaking* court: to the *insolvency* court, a *non-solvency* court, a *non-payment* court, a *non-liquidation* court, and a *non-discharge* court: each, with a different mode of procedure. Taking for the twelfth-cake the jurisdiction of the *aula regis*, let lots be drawn by all these courts, for these their respective stiles and titles. Allot to each of these courts one commissioner to begin with; then three commissioners (the number in the *insolvency* court in its improved state), then the square of three, 9; then the cube of three, 27: then the fourth power of three, 81; by which last the number of the commissioners of *bankrupts*, or *bankruptcy*, will be surpassed by eight, and proportionally improved upon. To secure what is called *qualification*, meaning thereby *appropriate aptitude*, impose as a task and test the having par-

token of a certain number of *dinners*, in some one in four great halls. Of situations of different sorts, of, under, or about these courts, number capable of being occupied by the same person at the same time, ten; by which the number occupied by a son of the ex-chancellor, the Earl of Eldon, will be outstript by *one*. To complete the improvement, conclude with pensions of retreat, after ten years' service, and pensions for widows, orphans, and upon occasion, sisters.

At the end of a certain length of time, the existing incumbents will be found, each of them, at the same time insufficiently and more than sufficiently apt, as was the case with the metropolitan police magistrates: then will be the time for adding one-third to their salaries: with or without the like addition to the other just mentioned so equitable and comfortable appendage.

We proceed now to present to the view of the Honourable House the evils, of which this system of disunion is, and so long as it continues in existence cannot but be, so abundantly productive: we shall point out the cause by which it has been produced: namely, the mixture composed of primæval inexperience and sinister interest.

In particular, in regard to imprisonment for debt, on its present footing, to wit, at the commencement of the suit—a period at which it is so frequently groundless, and so constantly ungrounded, it will be seen that it had no better origin and efficient cause, than sinister interest, in its foulest shape: special original cause, as will be seen, of this abuse, the splitting of the Common Pleas jurisdiction from that of the King's Bench; thereafter immediate cause, the grand battle between the two courts, in the reign of Charles the Second.

The use of confusion has already been brought to view: behold now one pre-eminently useful mode or efficient cause of it. In the practice of a large proportion of all these courts, both branches of law spun out together, the substantive branch out of the adjective, in the shape of *twist*, by the judge in the course of the operations of procedure, the twist afterwards woven into piece goods by the firm of report-maker, report-maker's bookseller, abridgment-maker, and his abridgment's bookseller: and in this way it is, that, on pretence of judicature, even the whole field of law, power of legislation continues to be exercised: exercised by the combination of such essentially and flagrantly incompetent hands!

Are you a chief justice? Have you a law to make? to make on your old established mode? The following is your *recipe*. Take any word or number of words the occasion requires: choosing, as far as they go, such as are already in the language: but if more are wanted, you either take them from another language. old French or Latin, or make them out of your own head. To these words you attach what sense you please. To enable you to do, by this means, whatever you please, one thing only is now wanting. This is, that, in the accustomed form, by some person other than yourself (for you cannot yourself, as in some countries, give *commencement* to a suit), the persons and things to be operated upon must be brought before you by the king's attorney-general, or an individual in the character of plaintiff. This done, you go to work, according to the nature of the case. Is it a civil one? To the plaintiff you give or refuse as much of defendant's property as is brought before you. Is it a criminal or

say penal one? you apply, or refuse to apply, to the defendant, the whole, or more, or less, of the punishment demanded for him at your hands. This you do in the first instance before and without any law to authorise you: for no such authorising law have you any need of: after which, in the way just mentioned, what you have done receives, in print, authority, extension and permanence, from the abovementioned hands, being by them manufactured into a sort of fictitious law doing the office of, and upon occasion overruling, an act of parliament.

From the process pursued in the principal of these manufactories, a conception, it is hoped, tolerably clear and correct, may be formed, of the manner in which this species of manufacture has been, and continues to be, carried on. These are—1. Equity courts. 2. Common law courts. 3. Courts christian, alias spiritual, alias ecclesiastical courts.

I. Turn first to the self-stiled *equity courts*. Words comprising the raw materials, *trust*, *fraud*, *accident*, *injunction*, *account*, with the word equity at their head—here we have the whole stock of them or thereabouts: stock in *words* small: but in *matter* as abundant as heart can desire. One of them, the master-word *equity*—so rich is it, that out of it, and by the strength of it, anything could yet, and to this day can be done, that lust of power or money can covet. What can it not do? It can take any wards, every infant, out of the arms of any and every father, and at the father's expense, keep cramming it with the pap of imposture and corruption, till the father is reduced to beggary, and the entire mass of the child's, rendered as foul as that of the crammer's mind.

Equity? what means it? A bettermost, yes, and *that* the very best, sort of justice. But, justice being, the whole together, so good a thing, what must not this very best sort be? Be it what it may, that which, on each occasion, is done by the judge of an equity court, is it not equity? Well then, by the charm attached to this fascinating word, to whatsoever he does, not only compliance and acquiescence, but admiration and laud, in the accustomed and requisite quantity, are secured.

II. Next as to the *common* law courts; and in particular the great criminal law court—the *King's Bench*.

Conspiracy, *blasphemy*, *libel*, *malice*, *breach of peace*, *bonos mores*, with their et cæteras, of these raw materials is composed the stock of the common law manufactory. That which equity does for chancellor, that or thereabouts, the single word, *conspiracy*, would of itself be sufficient to do for chief justice of King's Bench. With this word in his mouth, what is it a chief justice can not do? who is there he can not punish? what is there he can not punish for?

Persons *conspire*, things *conspire*—to produce effects of all kinds, good as well as *bad*. In the very import of the word conspiracy is therefore included the conspiracy to do a bad thing: now then so as proof has been but given of a conspiracy, that is to say, of the agreeing to do a something, or the talking about the agreeing to do it, the badness of this same something, and the quality and quantity of the badness, follow of course: they follow from the *vis termini*, the very meaning of the word, and may therefore without special proof be assumed.

So far, so good, where you have two or more

to punish. But how if there be but one? In this case a companion must be found for him. But this companion it is not necessary he should have a name: he may *be a person unknown:* for, because one of two criminals is unknown, is it right that the other should escape from justice?

So much for the King's Bench manufactory taken singly. Now for ditto and Common Pleas *united*, cases and suits called *civil: verbal stock* here—*case, trover, assumpsit*, with their et cæteras. Conspiracy, blasphemy, peace and malice—these words were found already in the language, and, whatsoever was the occasion or the purpose, required only a little twisting and wresting to make them fit it. *Bonos mores, trover*, and *assumpsit* had to be imported; *bonos mores* and *assumpsit*, from Italy; *trover*, from France: all of them had to undergo, in the machinery, more or less of improvement, ere they were fit for use. *Face* would would have been as intelligible as *case*, and served as well, had fortune been pleased to present it; *clover*, as *trover: mumpsit* as *assumpsit:* but *case, trover*, and *assumpsit*, had fortune on their side.

III. Now as to *Court Christian*. No *fissure*, violent or gradual, requisite here. Nothing requisite to be done otherwise than in the quiet way, by *splicing:* by splicing performed imperceptibly, and in the dark; in the pitchy darkness of the very earliest ages: no need of custom, of snatching, in the manner that will be seen presently, from any other branch of the Judge and Co. firm: simple addition was the only change needed.

Mode of proceeding, or say *recipe* this. Take any act of any person at pleasure, call it a *sin:* add to it a punishment, call the punishment a *penance*. Observe that the agent has a *soul:* say, that the

soul wants to have good done to it: say that the penance will do this good to it. If, frightened at the word *sin*, the people endure to be thus dealt with, any body is employed to accuse any body of any one of these sins: if then he fails to make answer in proper form, you make him do this *penance:* so, of course, in case of conviction.

Now as to *fees*. Fees you receive for calling for the answer: fees for allowing it to be made: fees for making it; and so on successively for every link in the chain. But, suppose no such answer made? Oh, then comes *excommunication:* an operation, by which, whether he does or does not think that he will be made miserable in the *other* world, he will at any rate be made sufficiently so in *this*.

A circumstance particularly convenient in this case, was and is, that, besides the fees received in the course of the prosecution, the penance and the excommunication themselves have been made liquifiable into fees.

Sin, in this case, it was necessary should be the word: not *crime* or *civil injury*. But the same obnoxious act might, and may still, be made to receive all these different appellations; and, on account of it, the agent dealt with in so many different ways; made, to wit, after the truth of it has, by the three different authorities, in and by their several different and mutually inconsistent processes, been ascertained.

The act supposes a blow, and the sufferer, a clergyman. Common Pleas gives to this same sufferer money for remedy to the civil injury: King's Bench takes money from the man of violence, for the king: Court Christian takes money from the same for the good of his soul, distributing

the bonus among the reverend divine's spiritually learned brethren.

True it is, that, upon proper application made, —one of these same judicatories, (the King's Bench to wit,) may stop proceedings in one of the others—the Court Christian to wit. But defendant —what gets he by this? One certain suit, for the chance of ridding himself of another. And note, that in this fourth suit, the mode of establishing the fact which is the ground of the application is different from every one of the modes respectively pursued in the other three.

Such is this species of manufacture: spinning, out of words, the sort of piece-goods called *law*, and *that* of the goodness that cloth would be of, if spun out of cobwebs. Now then, even from early time—time so early as the year 1285—time not posterior by more than two centuries to the original period all along in question—what need or pretence has there been for it? Not any. So early as the year 1285, Parliament gave birth to an idea, by which, had it been pursued, appropriately-made law might in no small proportion have been made in such sort as to occupy the place usurped by the spurious sort thus spun out blindfold, in the *ex-post-facto* way, in the course of judicature. At the tail of a paragraph, having for its subject-matter an odd corner of the field of law, the scribe of that day, as if by a sudden inspiration, soars aloft, and as if from an air-balloon, casting his eyes over the entire field, goes on and says, "And whensoever from henceforth it shall fortune in the Chancery, that in one case a writ is found, and a like case, falling under the law, and requiring like remedy, is found, the clerks of the

Chancery shall agree in making the writ:" after which, for appropriate confirmation, follows reference duly made to the superordinate authority, the next Parliament.

Behold here provision made for codification. Here was seed sown, but the soil not yet in a state to admit of the growth of it. In the barbarous mode of *ex-post-facto* judge-made law, were therefore of necessity fumbled out such indispensable arrangements, without which society could not have been kept together.

For ages, by common law alone, equity not being grown up to sufficient maturity, were these arrangements made. But, after all that had been thus done, and amidst all that was afterward doing by common law, abundant and urgent remained the need of such arrangements, in addition to those the topics legislated upon, in this same blind and spurious mode, by chancellors, with the word *equity* in their mouths, may serve to show.

1. *Trust*, 2. *fraud*, 3. *accident;* these three have been already mentioned. Add to them—4. *injunction*, (meaning *prohibition*,) as to use made of property in unmoveables: 5. *injunction* as to pursuit of remedy at common law: 6. *account;* expressions all these so handy and commodious, because single-worded. Add to them moreover, 7. obligations to deliver *in kind things* due: 8. obligation to perform *in kind services* due; these, with the exception of *injunction* as applied to common law *suits*, belonging to substantive law. Add, to all, the following, which belong to adjective law, or say judicial procedure: 9. elicitation of evidence, from the parties on both sides,—oral from their testimony, real and written from their possession: 10. At the time allotted to elicitation of orally elicited

evidence, the quantum rendered always adequate to the demand: 14. elicitation and recordation made, for eventual use, without actual suit.

All these objects had and still has common law, as we shall show, left in a manner to shift for themselves: left either without any provision at all made for them, or without any other than such by which the purpose can not, in any tolerably adequate degree, be answered.

Tkink now, of the enormity of the deficiency left, and inaptitude exhibited, by the assemblage of all these gaps.

1. First as to *trust*. Think of a system of law, under which, in relation to this head, nothing or next to nothing was done. Over the whole field of law, particularly over the *civil*, extends the demand, for the matter which belongs to the head of *trust*. Power exercisable for the benefit of the possessor, it is called *power*: power, in so far as not exercisible but for the benefit of some *other* person or persons, is called *trust*. In particular, in the hands of all public functionaries, considered as such, what power soever has place, is so much trust.

2. Secondly, as to *fraud*. Over the whole expanse of the field of law, more particularly the penal branch, extends the need of provision in relation to *fraud:* in whatever shape *maleficence* operates, *fraud* shares with *violence* the privilege of officiating as its instrument.

3. Thirdly, as to *accident*. Of the import of this term, the vagueness immediately strikes the eye. But, for bringing to view some conception of the application on this occasion made of it,—the two words—*conveyance* and *obligatory-engagement*, may here serve. Of the provisions requisite to be

made under this head, the principal beneficial purpose is the *prevention of disappointment:* the grand and all-comprehensive purpose, by which the purport of the portion of law occupied in the giving security for property, requires to be determined.

4. Fourthly, as to *injunction,* applied to the purpose of restraining mischief to immoveable property: *injunction,* meaning interdiction, or say inhibition or prohibition: for, in ordinary language, we speak of *enjoining* a man to *do* a thing, as well as to *forbear* doing it. As to the operation, performed under this name by a Court of Equity, it has for its correspondent and opposite operation that which, under the name of a *mandamus,* is performed in the courts of common law. In the case of the *mandamus,* the act commanded is a *positive* act; in the case of the *injunction,* a *negative* act.

Note here, by the bye, that to the provision made by both these remedies together belongs the property of inadequateness. For, to the evil, whatsoever may have been the amount of it, which, antecedently to the attempt made by them respectively to stop it, has already taken place—no remedy do they attempt or so much as profess, to make application of: no compensative remedy, no satisfaction in any other shape, no punitive: and at the charge of an honest, what is the profit which a dishonest man will not be ready to make, if assured that the worst that can happen to him for it, is the being stopt from making more? To himself no punishment; to the party wronged no satisfaction? But, as to any such ideas as those of all-comprehensiveness and *adequacy,* nearer would they be to a bed of Colchester oysters, than they are to a bench of English judges! A bench—what-

soever be the number of seats on it, whether one, four, or twelve.

5. Fifthly, *Injunction*, as applied to the pursuit of remedy at common law. Now for a riddle. To itself by itself this operation would not naturally be expected to be seen applied: it would be to the same operation performed by equity, what *suicide* is to the species generally understood by the name of *homicide*. As little would it, under the same judicial establishment, have been applied to the operations of any judicatory, by another calling itself a *Court of Equity*, if, to common sense, in union with common honesty, it were possible to obtain admission into such a theatre. Setting up one judicatory, to put a stop, at the command of any man that will pay for it, to the operations of another, and frustrate what in profession were its designs, and thus, without so much as a supposition of error on the part of the judicatory so dealt with, in an arrangement such as this, may be seen a flower of ingenuity that assuredly would in vain be looked for in any other field than that of English judicature. But, though no common law court, as such, nor therefore any common law court which is merely a common law court, has as yet, it is believed, been in the practice of thus dealing by itself, yet an English judicatory there is, which, being, like the Marine Corps, of an amphibious, and moreover of an ambodextrous nature, has been, and as often as called upon continues to be, in the practice of robbing the chancery shop of this part of its custom, by employing one of its hands in tying up the other, and one portion of its own thinking part, such as it is, in frustating what had in profession been the

designs of the other. This riddle is the *Court of Exchequer*. For a parallel, suppose this: Enactment that no public building shall ever be erected —no church, no palace, no prison, no posthouse— without employment successively given to two architects, the first to erect a building in one style —say the Gothic—the second to pull it down, and erect upon the site of it another in a different style —say the Grecian. Taken in both its parts, matched thus in absurdity would the Equity injunction system be: exceeded it would not be: were the mental cause of the evil mere folly without knavery, Gotham itself would find itself here out-Gothamised.

6. Sixtbly, as to *Account*. Think of a judiciary establishment, with three superior courts in it, professing, each of them, to settle mutual accounts to any amount, and on that ground receiving fees before any thing is done, and, at the hands of all applicants: these professed auditors two out of the three all the while unprovided with the machinery, without which that which they undertake to do, cannot be done.

The case is—the process of account is—not, as in other cases a simple and transitory, but a compound and a continuous process, the subject-matter being an aggregate, composed of two sets of demands; made one on each side, each of them, in case of contestation, capable of affording the matter of a separate suit. The process, continuous as it is, the Common Pleas the only one of the three courts which, in a case between subject and subject, took cognizance of it by right, gave itself no means of performing, otherwise than within the relatively short and determinate space of time, into which the business, if performed at all, could be

injected and condensed, like the business of a *play*, under the dominion of the unities. This business the only judicatory capable of going through in all cases, is the Equity Court. This has, it is true, machinery enough, and takes time enough. But, the machinery of it, having for its object and effect, the multiplication of fees, and thence the prolongation of time, the only sure result is the division of a large proportion, if not the whole, of the property of the accountant parties, among the tribe of auditors: and it is like a prize in a lottery, if any portion of the net balance finds its way into the pocket of him to whom it is due.

7. Seventhly, *as to delivery of things to the right owner:* the case of *restitution* included. Think of a system of law, by which no one moveable thing whatsoever *was*, or to this day *is*, so much as undertaken to be secured to the rightful owner! No: not so much as *undertaken*. For, if a man, not even imagining himself to have right on his side has possessed himself (as, without exposing himself to punishment he may do) of whatever moveable thing of yours, you most value—(a horse, a picture, an unpublished manuscript, for example) —what remedy have you? An *action*. Behold now how much better off, in this case, your dishonest adversary, the wrong-doer, is, than you, the party wronged! Only in case of its not being worth so much as it is valued at, does he give you back what he has thus robbed you of.

And by this action, what, even in case of success, is the utmost you can get? Not (unless the man, who has thus injured you, so pleases) the thing itself, but, instead of it, what is called the value of it: this value being what has been set upon it at full gallop, by twelve men brought

together by chance: twelve men, not one of them, unless by accident, understands anything about the matter. The estimate having been thus made, this same wrong-doer it is, who, after the days or months he has had for consideration, takes his choice and determines whether to let you have your property back again, or to convert it to his own use. And this money, when the jury have awarded it to you, will you have it clear? Not you, indeed: not this money will you have, but the difference between this and what you will have to pay your attorney, after he has *received* what, in the name of *costs*, has been awarded to you at the expense of the wrong-doer. And the amount of that same *money received*—what will it be? Something or nothing, or less than nothing, as it may happen: provided always that the said wrong-doer has the money, and *that* money capable of being reached by the so precariously effective process of the law: estates in land, money in the funds, shares in joint-stock companies, with property in an indetermediate number of other shapes, being of the number of things not thus reachable.

8. Eighthly, as to *fulfilment of obligatory engagements*. Think of a system of law, which gives not effect to any one sort of engagement, which men, living in society, have need to enter into, unless the intended violator of the engagement pleases.

In this case, behold the same favour to the wrong-doer as in the just mentioned case: instead of fulfilment, money received from the dishonest man, if he has it, and choose to give it, fulfilment effected; unless he choose to give it, none. Agree, for example, for the purchase of an estate. Common law does not so much as profess to give

it you. Natural procedure would give it you in a few days. Equity will give it you or not give it you, but when? At the end of several times the number of years.

The case is, that, bating the obtainment of a lot of land in entirety, or a portion of it by partition among co-proprietors, or a portion by a writ called an *elegit*, in lieu of a debt,—a process too complicated and rarely exemplified to be worth describing here,—such is the lameness of the law, that, for administering to a party wronged, satisfaction for the wrong, the only species of remedy, which the common law partners in the firm of Judge and Co. are (saving the narrow exception afforded by the case of a *mandamus*,) to this hour provided with, is *that* which consists in money: money of the defendant's, if, after paying charges, by good fortune any such money is left, and can moreover be come at: for which purpose, the sheriff of the county, that is to say, under his name, and by his appointment, a nobody knows who seizes and causes to be sold whatever is comeatable and saleable: the remedial system being in such a state, that a man may have to the amount of any number of millions in the shape of government annuities, and each one of a variety of other shapes, without the sheriff's being able, were he ever so well disposed, to come at a penny of it: one consequence of which is, that a dishonest man, with other men's money in his hands, may consume it in luxuries, or do anything else with it he pleases, if he had rather continue in a comfortable apartment in a prison, than part with it.

So much as to substantive law: now as to adjective law, and therein as to evidence.

9. Ninthly, *as to elicitation of evidence from the*

testimony and the possession of parties. Think of a set of judges, with whom it was and still is a principle, to keep justice inexorably destitute of evidence from this its most natural, most instructive, and oftentimes sole and thence indispensably needful, source!

A defendant (suppose) is in court. Is this or is it not your hand-writing? My lord chief justice—will he put any such question to him? Not he, indeed. Will he suffer it to be put to him? As little. Good reason why. Infinite is the crop of fees, that would be nipt in the bud by any such impertinence: and if a question of this sort were to be allowed to be put, what reason could be given for refusing to give allowance to any other?

Considering how unpleasant it would be to a dishonest man, with an honest man's money in his hands, to part with it; still more so to a malefactor to do anything that could contribute to his punishment—considering all this, and in all sincerity sympathizing with these their partners and best friends—conscience, in these tender hearts, revolts at the idea of any such cruelty. Thus it is with the common law branch of the firm.

Somewhat less sensitive are the nerves of the *equity* branch. Evidence it *has* brought itself to draw from this so surely reluctant source. But it is on one condition: and that is—that years be employed in doing that which might be so much better done in a few minutes, and pounds by hundreds or thousands in doing that which might be so much better done at no expense.

10. Tenthly, *as to the time allotted to the elicitation of really elicited evidence; and the adjustment of the quantity of it to the demand.* Very little to the taste of the common law branch is any apt adjust-

ment of this sort. In what manner it reconciles opposite mischiefs—*delay* and *precipitation*—turning them both to account, has been shewn under these same heads. General rule—the less the quantity of such evidence, and the less the time consumed in the elicitation of it, the better: for nothing is there to be got by it. As to elicitation in the *epistolary* mode, nothing, even at this time of day, does common law know of any such thing. For this employment of the pen, neither at the primæval period in question, nor for many centuries thereafter, were hands sufficient to be found. That sort for which alone there was, in all that time, *clerk power* in sufficiency, was that which, being essentially false, was distinguished, as abovementioned, by the name of *pleadings*—written pleadings: and by which, as much money thus employable as the pecuniary means of the country could furnish, was to be got. So much for common law. For equity it was that fortune reserved this the richest mine in the field of procedure. Observing how much was to be got by penmanship, it sets its inventive genius to work, and having invented this new mode of elicitation, stept in, proffered its services, and got to itself this new branch of the evidence-eliciting business: terms and conditions as usual: time, by years: pounds, by hundreds or thousands, as above.

Under the head of the *mendacity device* reference is made to the present one, for a hot-bed, and mode of culture, in and by which this fruit, so delicious to learned palates, is forced. Now for a sketch of it. Frequently, not to say generally, a part more or less considerable, of the evidence necessary to substantiate the plaintiff's cause, has for its source the recollection of the

defendant. Of course, not always without more or less of hurt to his feelings can this sort of information be furnished by this same defendant. In tender consideration thereof, common law judges, as above, refuse so much as to call upon him, or even to suffer him, to furnish it. The keeper of the great seal and of the king's conscience, is not quite so difficult. He has his terms however to make with the plaintiff, and they are these. "Whatever the defendant knows that will help your case, you will, of course," says his lordship to the plaintiff, "be for asking him for, and putting questions to him accordingly. Good: and the answers he shall give. But, it is upon this condition. Before you ask him how the matter stands, you must yourself begin and tell him how it stands: otherwise, no answers shall you have. This is what you must do, as to every fact you stand in need of. Now then, to do this, you must, of course, for each such fact, have a story framed, such as will suit your purpose: but *that* story it is your counsel's business to do for you. He, and he alone knows what is proper for the occasion. What it consists of is a parcel of lies, to be sure. But that's his concern, not yours: you have not to swear to them. As to the story's being a lie, that's no concern of yours. I and mine get money by all this: so there is no harm in it: and, as you do not swear to it, you can't be punished for it.

"As to another world, *that* to be sure there is, and with a God's court in it. But there, it is your counsel that will have to answer for it, not you: you can't help it: no, nor he neither, without losing his fees. I, for my part, have some thousands of these lies upon my back, or I should not

be where I am: look at me: what am I the worse for it?"

11. Eleventhly, as to *elicitation and recordation, made, for eventual use, without suit.* Be the occasion what it may, be the source what it may, evidence obtainable to day may cease to be obtainable tomorrow. Here then may be seen a deficiency: but, as to the want of supply for it, at the early age in question, no wonder it should have had place. In the field of justice much insight into future contingency was not to be expected from men who, to so vast an extent, were blind to what was, in this same field, passing under their own noses.

For this deficiency, *equity* had no objection to afford a supply: but of course upon her own terms,—those terms, which have so often been brought to view. Those terms required *a suit* on purpose: for, a suit was necessary to *equity*, how little so ever necessary to *justice*.

As to recordation,—at the early period abovementioned, clerk power enough there was for the *pleadings*—the mixture of *lies* and absurdities above described; none was there for the evidence, the only sort of matter which presented a chance of being chiefly composed of relevant and material *truths*. Accordingly, in the mass of matter called the *record*, no sort of matter can there be so sure of not being found, as that which stands distinguished by the name of evidence.

Not but that, to prove its own existence, the entire hodge-podge may, on a particular occasion (fees being first received), be admitted under the name of evidence: to prove, for example, that a man was convicted of murder: but by what it

was that the murder was produced, whether, for example, by an endeavour to kill the man, or by an endeavour to kill a fowl (for, for this has a man been convicted of murder), if this be what at present you want to know, in the newspaper you may be sure to find it, in the record you will be sure *not* to find it.

Such, for exigencies of all sorts, being the provision made by common law before the birth of equity,—made in the common law courts, before the formation of the equity courts,—behold now the account given of it by *Blackstone*.

Speaking of an old book in Latin, called the *Registrum Brevium*,—composed chiefly of forms of orders called *writs*, given in the name of the king to the sheriffs,—in it, (says he, III, 184), "*Every man who is injured* will be sure to find *a* method of relief *exactly* adapted to his own case, described in the compass of a few lines, and yet *without the omission of any material circumstance*." So much for Blackstone. To the dream of this reporter, would you substitute the sad reality? For *a* put *no:* for *omission insertion:* make these corrections, the picture will be nearer the truth. Dates none, arrangement none, other than the alphabetical, either in the collection itself, or in judge Fitzherbert's commentary on it, and in the additions made to that commentary in any subsequent editions made of it. So much for the universal oracle. Such is the source from whence the notions of the universal unlearned as to what the law is, have down to this time been derived!

To return to equity court. In the provision made by common law, gaps requiring to be filled up, sure enough sufficient: sufficient in number, sufficient in magnitude: necessity of filling up

sufficiently urgent. But, for the filling them up, was any additional court, either a necessary or so much as a proper instrument? An additional court thus kept destined and separate from the court to which it was added? More particularly, a court invested with such powers as, in relation to the court it was added to, were assumed by this same so called *court of equity*? a court superior to it in effective power, and yet without being, either in name or nature, a court of appeal from it? Taking up the matter at the pleasure of any man, who, without any ground whatsoever, would pay the price set upon the injustice at any stage of the suit, riding over the competent authority, and rendering useless everything that had been done, and thrown away every penny that had been expended in that same judicatory? The thus maltreated judicatory all the while not the less abundantly lauded, for being regarded as requiring to be dealt with?

A sort of severance this, mischievous enough, —and, as such, worthy enough of remark at any time. But, *at present*, a circumstance which gives to it, in the particular case in question, a particular degree of importance,—gives, to the particular case of severance here in question, and produces accordingly the need for thus dwelling on it, is—the care, which, on the occasion of the *recently instituted improvements*, has been taken, to keep it up (this same severance), and, of course along with it, the uncertainty, delay, vexation, expense, and lawyer's profit, engendered by it.

Lastly, as to the aggregate composed of the four courts thus instituted,—the several separate denominations of necessity attached to them, the jurisdiction formed by the several splinters thus

put side by side, and one mischievous consequence flowing of course from the very nature of the operation—splitting and splicing operation.

Of the application thus made of so many different names the consequence is, the implied information and assurance of the existence, and thence of the necessity of so many different natures, and modes of proceeding on the part of the several courts thus differently denominated.

In the case of these denominations what serves to fix and thicken the cloud composed of themis, their being derived from different sources: in some cases, the source is the name of the *species*, or rather, as will be seen, the *sub-species* of suit; in other cases, the *initiatory process*—that is to say, the *written instrument* by the delivery of which, on the *operation* by the performance of which, the suit takes its own commencement. Behold them, here they are.

I. Under the species of suit termed *civil*, name of the initiatory process, if in the Common Pleas, *action:* if in the King's Bench, in one sort of case, *action* likewise; in another sort of case, comes the name of the instrument *mandamus;* name of an operation by which it is preceded, *motion for a mandamus;* in another sort of case, name of the instrument, *quo warranto;* name of the antecedent operation, *motion for a quo warranto:* in an equity court, including the equity side of the amphibious court—the exchequer—*bill;* in the common law side thereof, *action;* in another sort of case, in a Christian court, name of the instrument, *libel.*

II. Under the species of suit termed *criminal* or *penal*—common to all these courts in one sort of case, is one sub-species, *attachment:* to which de-

nomination is in some cases substituted the circumlocutory and milder denomination, constituted by the antecedent operation—*motion that the defendant may answer the matter of the affidavit* (this being the initiatory instrument): in another sort of case, in the King's Bench, name of one sort of instrument *indictment;* in the same sort of case, in that same court, name of another sort of *instrument, information:* name of the *antecedent operation, motion for leave to file an* INFORMATION: in the same sort of case, still in that same court, name of the instrument again, *information:* name of the antecedent operation, *filing an information*, to wit by the attorney-general, without *motion;* in another sort of case, in the Exchequer, name of the instrument *qui tam information;* in another sort of case, in the Christian court, name of the instrument, *libel* again: note here, by-the-bye, in the case of this word *libel*, the confusion further thickened, by the giving to one and the same appellative the commission of officiating as the sign of two opposite things signified: namely, an alleged *disorder*, and a professed *remedy*.

Sufficient, it is hoped, this exhibition, without the addition of the rarer sorts of suits, such as the *scire facias* and its *et cæteras*.

Such is the enrichment which the vocabulary of English jurisprudence has actually received, from the principle pursued by this practice: the employing different operations with different instruments, for the attainment of the same end. What bounds are there to the ulterior enrichment, which, from the same principle, it might, with as good reason, be made to receive? Take a few examples.

First, as to *courts:* by multiplication given to

the names, and with them to the species, of these judicatories. One example may here serve. Take for a model the *court* of *equity*, with this its sentimental name: additional courts with like imitative names, court of *probity*, court of *integrity*, court of *common honesty*, court of *honour*, court of *righteousness:* another such winning name, court of conscience, in point of propriety, forming a striking contrast with the court of equity, has already been brought into employment by statute law.

Take secondly and lastly, for the instrument of multiplication and confusion, the name of the instrument, by which commencement is given to the *process*. Model, in this case, the word *libel;*—a word meaning, in the original Latin, a *little book:* proposed imitative names of instruments—*leaf*, *sheet*, *roll*, *scroll*, *volume*. Yes, *volume:* for, in some cases, in equity more especially, scarcely to the existing sort of instrument—the *bill* to wit—would even this appellative, notwithstanding the seeming exaggeration, be altogether misapplied.

Now as to the degree of *appositeness*, with which the signs are here coupled with the things signified. For an emblem of it, take two hats: into one put the *things;* into the other the *signs;* which done then, having drawn out of the one a *thing*, draw out of the other a sign for it: as, on a Twelfth-day, styles and titles are coupled with slices of cake and names of cake-eaters.

In the aggregate of all this surplusage, may moreover be seen, one out of the host of visible examples, of the way, in which, by the English lawyer, as by the astrologer,—and for the same purpose,—has been created, out of nothing, a sort of sham science.

Correspondent to this science, with the art be-

longing to it, is the list of official functionaries, employed, on this occasion, in the exercise of the art. Note well the multiplicity and ingenious variety of their denominations. By one single one alone of the four Westminster-hall courts, the King's Bench, is furnished the list which follows. But, for a standard of comparison, note first the sorts of functionaries which, under the official establishment hereinafter proposed for giving execution and effect to the here proposed natural system of procedure, would be requisite and necessary under the command of the judge. Here it follows: 1. *Registrar*. 2. *Prehensor*, or say *Arrestor*. 3. *Summoner*. 4. *Doorkeeper*. 5. *Jailor*. Now then follows the list of those actually in existence as above under the King's Bench.* "1. Chief clerk. 2. Master. 3. Marshal of King's Bench prison. 4. Clerk of the rules. 5. Clerk of the papers. 6. Clerk of the dockets, judgments, satisfactions, commitments, &c. 7. Clerk of the declaration. 8. Clerk of the common bails, posteas, and estreats. 9. Signer of the writs. 10. Signer of the bills of Middlesex. 11. Custos brevium. 12. Clerk of the upper treasury. 13. Clerk of the outer treasury. 14. Marshal and associate. 15. Sealer of the writs. 16. Judge's clerks. 17. Sheriffs of London and sheriff of Middlesex. 18. Secondaries. 19. Under-sheriff. 20. Ushers, tipstaffs, &c." Here at length ends the list of the swarm of locusts which buzzes about this one of the four courts—the King's Bench: places of feeding, no fewer than ten: some of them not less than three miles from

* Taken from an instructive little treatise intituled, a Complete History of an Action at Law, &c. by Thomas Mayhew, Student of Lincoln's Inn, 1828: pages, no more than 82.

one other. Calculate who can the quantity of time consumed with expence correspondent, by attornies, in the journies necessary to be made all over this labyrinth.

XIV. *Result of the fissure—groundless arrest for debt.*

Comes now the battle royal:—battle of the courts: battle for the fees. Result, groundless arrest. As at present, on pretence of debt: effect, imposed on innocence an aggregate of suffering, vying in severity with that inflicted on the aggregate of crime.

Let it not here be supposed, though it were but for a moment, that, on imprisonment for debt, condemnation without reserve is meant to be pronounced. Condemn in the lump, condemn without exception, imprisonment, and even imprisonment for debt, for debt you would condemn all satisfaction, and as well might you, for all crime, condemn all punishment.

Look for the proper time, you will find it in that of the *second* of the operations requisite to be performed in the course of the suit: at the time of, and by, the first, the existence of an adequate demand for this same second operation having been ascertained: improper time, that of the first operation: this same first operation being the arrest itself, performed without any such ascertainment: performed by the judge, without enquiry, and at the pleasure of any one who will purchase of him this service, at the price he has set upon it:—upon so simple a distinction turns, in this case, the difference between the perfection of good, and the perfection of evil.

Ascertained, (asks somebody), the existence of

this same adequate demand? by what means? Answer. By this means—To give commencement to the suit, attends in court the plaintiff, and stating his demand, states at the same time the need there is of the arrestation: subject matter of it, either the body of the proposed defendant, or some property of his, or both: this operation in the first instance: otherwise on hearing of the demand, off go person, or property, or both, and therewith all hope of recovery for the debt—all hope of effectual justice.

Mark now the security afforded by the here proposed course, against the oppression now so completely established, and so abundantly exercised—the oppression exercisible at pleasure by any man in the character of plaintiff, on almost any man in the character of defendant: at the same time, the superior efficiency of the means afforded for the recovery of the debt.

Being thus in the *presence*, the applicant is completely in the *power*, of the judge: unlimited is the amount of the punishment, to which, in case of purposed and mischievous misrepresentation, he may be subjected. In this state of things, two opposite dangers present themselves to the judge's choice: in case of the non-exercise of this power of precautionary seisure,—danger of injustice to the detriment of the plaintiff, by loss of the debt; in case of the exercise of this same power, danger of injustice, to an indefinite amount, to the detriment of the proposed defendant thus dealt with.

Between these two opposite mischiefs, who does not see, that no otherwise than by a scrutiny into the circumstances of each individual case, can any tolerably well grounded choice be made? and, for

this scrutiny, no source of information has place as yet, other than the evidence of the applicant, extracted by his examination: an information, without which, or any other, under the existing system, arrestation is performed without scruple: that is to say, on the *body;* and with as little might it be, though at this stage of the proceedings it never is, on *property*.

This power then, either it is exercised, or it is not: if yes, security will need to be taken for two things: 1. for the applicant's effectual responsibility, to the purpose of compensation or that of punishment, or both, as the case may require: 2. for his being eventually reached by a mandate, or, in case of need, by a functionary armed with a warrant for arrestation, wheresoever it may happen to him to be, during the continuance of the suit: a security this last, the demand for which (it may be seen) has place, in the instance of every person, to whom, for whatever purpose, in whatever character, it happens to have presented himself to a judge: a security with which, for reasons that will be seen, Judge and Co. know better than to have provided themselves with.

Why say *attendance*, not *appearance?* Because, by lying lips and pens, the word *appearance* has been to such a degree poisoned, as to be rendered unfit for use. When, in the record, entry is made of what is called the defendant's appearance in court, what is the real fact? Never that he, the defendant, has made his appearance in court; always that an attorney employed by him has made *his* appearance: nor even this in the court, but in another place: to wit, in one of the offices, of the nature of those contained in the above-mentioned list.

To return to the applicant's here proposed actual attendance: in most instances it will be possible and with advantage practicable. But in some instances it will be either impossible or not with advantage practicable. Of these last cases, for the purpose of the here proposed system, a list has been made out: so likewise of all the *shapes*, of which the just-mentioned security is susceptible: which list may be seen below: so likewise of all the several diversifications, of which the mode of securing *intercourse*, or say *communication*, with an applicant, or any other person who has made his appearance during the continuance of the suit, is susceptible.

For the institution of this little cluster of arrangements, a combination of common sense, and common ingenuity, with common honesty, was indeed necessary, but at the same time sufficient. In the provision made by the existing system, where is there to be seen any symptom of the union of these same requisites? How should there be?—Without the existence of the applicant in the presence of the judge at the outset of the suit, nothing of all this can be done: and, as there is such continual occasion to observe, scarcely can the presence of a *dun* be more appalling to a spendthrift, than, in a *civil* case, to an English supreme-court judge, the presence of an individual, whose property (and under the system of mechanical judicature, as hath been seen, in most cases without knowing anything about the matter,) he is disposing of.

Now, for want of some such as these proposed arrangements, under the existing system behold the state of things. General rule this. At the pleasure of any man, without grounds existing or

so much as pretended to exist, any man may be arrested and consigned to a jail, with no other alternative than that of being, if able and willing to pay for the accommodation, consigned to an arresting-house, called a *lock-up-house*, or a *spunging-house*.

Exceptions are—1. where the debt does not amount to so much as 20*l.*: 2. when it does amount to that sum, the plaintiff omits to make an affidavit, whereby he avows upon oath, that the sum demanded by the suit is justly and truly due. And this, without adding *upon the balance:* so that a man to whom another owes 20,000*l*, may be arrested by him, on a particular account specified, for 20*l*. Originally the sum mentioned on the occasion and for the purpose of the limitation thus applied, was no more than 10*l.*: it is by a recent Act, that it has been raised to this same 20*l*. 1826: original act, that of the 12 Geo. I. ch. 20; year of our Lord 1728. Date of the act under which, for the benefit of the Court of Common Pleas the practice of arrest for debt was established, year of our Lord 1661: thus had the abomination been reigning four-and-sixty years before so much as this alleviation was applied to it. Yet, such as it is, keen in Judge and Co. was the sense of the injury thus done to the whole partnership. Faces, lengthened by the recollection and report of it, were witnessed by persons yet alive.

Oh, precious security! Mark now a set of incidents, any one of which would suffice for rendering it ineffectual.

1. In case of *mutual* accounts, a man who is a debtor on the balance, and moreover in a state of insolvency, in such sort as to be incapable of making compensation for the wrong, is free to

make use of it in such sort, as to inflict vexation and perhaps ruin on the creditor thus dealt with.

2. No limit is there to the multitude of knowingly false demands, which, to the wrong of one man may thus be made by any other, and this without his being at the expense of a perjury; by which, however, if committed, he would not, in more than the trifling degree which, under the head of *oaths*, be exposed to hazard.

3c To a man who is about to leave England, having therein no property, or none but what he is taking with him, or none which, by such inadequate means as the law affords, can be come at, this apparent check is, it will be seen, no real one.

4. On so easy a condition as the finding another man, who, being a man of desperate fortunes, will, for hire, perform his part in this so extensively contemned ceremony,—any man may cause his intended victim to be arrested for sums to any amount, and thereby for a sum for which it will not be possible for the victim to find bail.

5. The assertion is admitted, without being, in any case, subjected to cross-examination. Hence the invitation to mendacity and perjury.

6. To those alone whose connections on the spot, in addition to the opulence of their circumstances, admit of their finding bail, is the privilege of being conveyed to a spunging-house instead of a jail, extended.

So much for inadequacy: now for incongruity. To the above-mentioned efficient causes of inadequacy, may be added the following features of incongruity, relation had to the existing system.

1. Swearing to the existence of the debts, the affidavit-man is forced to swear to his knowledge

of the state of the law: that same law which, with such successful care, it has been rendered and kept impossible for any man to know.

2. The testimony thus delivered, is testimony delivered by a man in his own favour, in contradiction to a rule and principle of common law. Note, that *inconsistency*, not *inaptitude*, is the ground of condemnation here.

General result—with the exception of the privileged few, every man exposed to ruin at the pleasure of every other, who is wicked enough, and at the same time rich enough, to accept of the invitation which the judges and their associates in the iniquity, never cease thus to hold out to him.

So much for the *evil* done by the battle, and the *good* which so obviously should have occupied the place of that same evil. Now for the battle itself. Origin of the war—power, thence custom, surreptitiously obtained from Parliament, by the judges of the Common Pleas, a little after the Restoration, at the expense of the judges of the King's Bench. The power thus obtained was, that of employing, in an action for *debt*, this same operation of arrest, in giving commencement to the suit. By the known acquisition of this power, was made, to all who would become customers, the virtual offer of the advantage that will be seen. In the case of the honest plaintiff, it consisted in the obtaining his right in a manner more prompt and sure than before: in the case of the dishonest plaintiff, to this same advantage was added, as has been seen, the power of ruining other persons, in a number proportioned to the compound of cupidity, malevolence and opulence belonging to him, at pleasure.

This plan succeeded to admiration. Common Pleas overflowed with customers. King's Bench

became a desart. Roger North, brother and biographer of Lord Keeper *Guildford*, at that time Chief Justice of the Common Pleas, depictures, in glowing colours, the value of the conquest thus made. At this time, *Hale*—the witch-hanging *Hale*—prime object of Judge and Co.'s idolatry—was Chief Justice of the King's Bench. Chagrined, to the degree that may be imagined, by the falling off of his trade, he put on, of course, his considering cap.—What was to be done? After the gravest consideration, he at length invented an instrument, (as a manuscript of his, published in Hargrave's Law Tracts, informs us,) an instrument, with the help of which he himself, with his own hands, succeeded in stealing that same power which the legislature had given to the court of Common Pleas. Yes: so he himself informs us: so blind to the wickedness of telling lies, and getting money by it—so dead to the sense of shame, had been made, by evil communication, this so eminently pious, as well as best-intentioned judge, that ever sat upon a Westminster Hall bench.—Name of the instrument, the *ac etiam:* description of it not quite so short. To give it, we must go back a little.

At the primæval period so often mentioned, the great all-competent judicatory had received, of course at the hands of the Conqueror, this same power of arrestation, applicable at discretion. At the time when, by the original *fissure*, the allotment of jurisdiction was given to the Common Pleas—to that judicatory, to enable it to give execution and effect to its decrees, was given the power of operating, to this purpose, on property, in certain of its shapes: the power of operating on person not being given to this court; except that,

at the end of a long-protracted course of plunderage, of which presently, came the process of *outlawry:* outlawry—a rich compost, in which, in a truly admirable manner, barbarity and impotence, to the proper and professed purpose, were combined.

On this same occasion, the cases remaining to the King's Bench branch of the all-comprehending jurisdiction, after the fissure, were those in which, under the name of *punishment*, suffering was purposely inflicted: sometimes called *penal*, sometimes *criminal*, was the class composed of these cases. By the words *treason*, *felony*, and *misdemeanour*, were originally marked out so many degrees, (treason the highest,) in the scale of punishment: with like effect, between felony and misdemeanour, was afterwards inserted the word *premunire*. In process of time, a little below *misdemeanour*, King's Bench contrived to slip in the word *trespass:* and thus armed, as opportunity served, it began its encroachments on the jurisdiction and fees of the helpless Common Pleas.

Misdemeanour meant and means *misconduct*, or say *misbehaviour: trespass*, meant *transgression: transgression*, in the original Latin, *transgressio*, is the going beyond a something: the something, on this occasion understood, was of course a law. Not that any such thing was in existence: no matter. On this, as on every other part of the field of common law, it was feigned.

When, for anything or for nothing, it was the pleasure of the king, or for any man whom it pleased him to allow, thus to act in his name, that a person should be dealt with in this manner, plaintiff's attorney went to the shop, and the foreman, on hearing it, sold him an order directed to the sheriff, in the body of which instrument that

functionary was informed that defendant had committed a trespass, and from the sheriff the information would, in course, pass on to the defendant, when the time came for his finding himself in Lob's pound.

In process of time came a distinction: a distinction between *trespass* simply, and trespass *upon the case*. Much the wiser the defendant was not for the information, in either instance, how much soever the poorer: trespass meant nothing except that the man was in the way to be punished, and trespass upon the case meant just as much.

Here then were two instruments: now for another such: this was the word *force*. Whatever was done, by *force* not warranted by legal authority, was (it was seen) in everybody's eyes a *crime:* out of this word was accordingly made this other power-snatching instrument. One vast acquisition thus made with it, and it was a vast one, was the cognizance of suits having for their subject-matter title to landed property. To every man who claimed a portion of land, intimation was given—that, if he would say he had been turned out of it, instead of *turned out* using the word *ejected*, relief should be given to him by King's Bench: relief, by exemption from no small portion of the delay, expense and vexation, attached to the preliminary, and, as will be seen, so ingeniously wire-drawn, process of the Common Pleas. *Ejected* means turned out by *tossing:* and how could anybody be tossed out of anything without force.

Emboldened by success thus brilliant, they went on—these pre-eminently learned and ingenious combatants—to the case of *adultery*. Here, court *Temporal* had to fight with court *Christian*, alias *Spiritual*. Court *Spiritual* had seen in this prac-

tice a *sin*, and dealt with it accordingly. With this sin Common Pleas had found no pretence for intermeddling. More fortunate, more bold, and more sharp-sighted, was his lordship of the King's Bench. He saw in it (so he assured, and continues to assure the sheriff) a species of *rape:* a crime of some sort it was necessary he should see in it, and the nearest sort of crime was this of *rape*. It was committed, he said, *vi et armis*—by *force and arms*. This invention was quite the thing: that *arms* had, in every case, more or less to do in it, was undeniable: and seeing that, on the occasion in question, motion could not but have place, and considering that motion can scarcely be made without a correspondent degree of force, thus was this part of the charge made good: and in return for their custom, injured parties received from the learned shopkeeper, at the charge of the adulterers, money under the name of *damages*.

Inconsistency was here in all its glory, *crime* had *punishment alone*, not *damages*, for its fruit: this was a principle: yet adultery was thus made into a crime, and at the same time made to yield damages: it was thus a *rape* and *not rape:* rape, that it might be made into a crime: yet not rape, because, if it were rape, adulterers would be all of them to be hanged: to which there were some objections.

Of the weapon employed on this occasion, the form was the same, as that of the weapon employed, as above, in the war with the court of Common Pleas; and here follows a further explanation, for which, it must be confessed, *that* former place was the more proper one: but, in discourse, clouds are not quite so easily dissipated as formed. Speaking to the sheriff after commanding him to take up the

defendant on the ground of an accusation of *trespass*,—trespass not giving intimation of anything, except the eventual design of punishing as for a crime,—his lordship went on to add, *as also* to a demand on the score of debt, to an individual (naming him). Here then, by his learned lordship, were two real crimes committed in the same breath, for the purpose of pretending to inflict punishment for, and really reaping profit from, this one imaginary crime: one at the charge of the Common Pleas judges, to whom alone, by *Magna Charta* as above, belonged the cognizance of cases of debt: the other, at the charge of every member of the community, thus subjected to the power of groundless arrest and imprisonment, as above. On this occasion, in dumb show—dumb indeed, but not the less intelligible—was this his language. "All ye who believe yourselves to be in the right, and all ye who know yourselves to be in the wrong, but, at the same time, wanting the accommodation for the purpose of ruining some person you have fixt upon, come to my shop: there is my prison, and to it he or she shall go."

Thus much to wished-for customers. Now to the sheriff. "Take up *Thomas Stiles*, and put him into your jail: when there, he *will be* in our power, we will make him pay a sum of money which *John Noaks* says he owes him." Such, in the address of the chief justice to the sheriff, was, and is the language of the appropriate document—the only source, from which any conception could be formed, of the calamity into which the proposed defendant was, and is thus destined to be plunged. It was a *writ*, addressed to the sheriff of the courts in which the defendant was, or was assumed to be, resident, "Will be in our power?" Be it so:

but, suppose him actually in their power:—his being so, did it give them, in relation to their younger brethren of the Common Pleas, any right which they did not possess before?

As to his being already in their power, neither was this the case, nor was it so much as supposed to be. But, should it so happen that the sheriff had taken the man up and brought him to his lordship, whose clerk's signature is to the writ, then the destined victim would be in his said lordship's power, and then he would make him comply with the demand, or defend himself against it, or abide the consequences.

As yet here is no lie. But, if the supposed residence of the destined defendant were any where but in Middlesex, then came the demand for lies, and with it the supply. *Lie the first*, averment that defendant's residence is in Middlesex: and by this was constituted the warrant, such as it was, for *writ* the first, with its fees.

Lie the second—said defendant is lurking and running about (*latittat et discurrit*) in this county of : the blank being filled up with the name of the county in which it suits the purpose of the plaintiff, or his attorney, to suppose him to be. This is what he was and is told, in the text of another writ, addressed to the sheriff of county the second, for whose information the writ, addressed to his brother of Middlesex, is thus recited, and the difference between the cost of the one writ and that of the two writs, is a tax or penalty, which all persons who omit to live in Middlesex pay for such their default.

Such was the plan of the counter-invasion. Serious and sensibly felt it cannot but have

been, to the potentate whose domain was thus invaded.

How to get back the advantage was now the question. Under English practice, *deception* (need it now be said), is, on each occasion the readiest, most efficient and favourite instrument. A man had forged a hand, "don't trouble yourself about proving the forgery," said his learned adviser, "forge a release." A similar instrument was accordingly fabricated by the Common Pleas, and succeeded. Not but the re-conquest had some difficulties to contend with: for, (as honest Roger informs us), king's tax and chancellor's fees were affected by it: but these difficulties being the only ones, and these removed, King's Bench's mouth was thus closed.

No hypocrisy here. For a cloak of any sort, no demand so much as suspected. Two sharpers playing off their tricks against one another—such is the character, in which, even with his approbation, the two lord chief justices are held up to view, by this confidential brother of one of them. "*Outwitting*," one of the words employed: *device*, another. Encrease of business the avowed object: of business such as has been seen: proportioned to the success, the exultation produced by it: proportioned to the amount of the booty, the triumph of the irresistible robbers.

Sole interests so much as pretended to be consulted, the interests of Judge and Co.; of this firm, his majesty was, as above, declared, one of the partners: the swinish multitude, with their interest, thought no more of, or professed to be thought of, than so many swine.

The King's Bench was not the only place at the

hands of which the helpless offspring of Magna Charta lay exposed to invasion. Another inroad was that made by the Court of Exchequer. In the pretence made in this case, no such downright and all-involving lie was, however, included. In this case, the king was indeed stated as delivering the commandment; and, forasmuch as his majesty knew not, on any occasion, any more of the matter than the pope of Rome—in this shape and thus far was a lie told. But that which his majesty was represented as insinuating, though but insinuating, had commonly more or less of truth in it. It was, that the plaintiff was in his majesty's debt: a state of things which would, of course, have place, in the instance of any man, who had tax to pay, or service to render.

But this same court of Exchequer, to which no such power had been given, what business had it to meddle or make, while there sat the Common Pleas, to which the power *had* been and continued to be given? Had there even been no such judicatory as the Common Pleas, the only persons, in whose instance anything done by the Exchequer could contribute to the proposed effect, would have been such as were in a state of insolvency: nor yet all of these: for, till all demands on the account of the king were satisfied, never was so much as a penny allowed to be touched by any other creditor than his said majesty. Yes, as above observed, *insinuating* and nothing more. For, all that his majesty is represented as saying is, that *the plaintiff says*, he owes a debt to his said majesty, not that such is really the case.

So much for this enormity. Out of it grew another, to which the word *bail* gives name. *Finding bail*, as the phrase is, is the name of one

species of those *securities*, allusion to which has been made, as above. In this case, after having been arrested by an emissary of the sheriff's, and consigned to the appropriate gaol, or, on paying for the indulgence, kept in the house of this same emissary, or some person connected with him (name of the house, a *lock-up house* or *spunging house*) he is, if certain persons render themselves responsible to the sheriff, or without this security, if the under-sheriff so pleases, liberated. These persons are stiled the bails: number of them, one, two, or more, commonly two. As to what they undertake for, it is, in different cases, different: but, for the most part, it is the consigning the defendant to the gaol, or else satisfying the plaintiff's demand.

As to the remedy which this same security affords—nothing could be more completely of a piece, with the so industriously and inhumanly fabricated disease. To the comparatively opulent, an alleviation—to the comparatively indigent, an aggravation. Compleat, in an admirable degree of perfection, is the machinery employed in the application of it: to such a degree, that lengthy treatises are occupied in the description of it: enormous the complication, proportionable, of course, the delay, vexation and expence, produced by it.

As to all this suffering, what do Judge and Co. care about it? Just as much as they care for the rest of the mass of suffering which the system, in its other parts, organizes. What a steam-engine would care for the condition of a human body pressed or pounded by it.

Directed to its proper end, the process of *judicial security-finding*, is an operation, having for its object

alleviation to the hardship inseparable from the process of subjecting a patient to the sorts of operations performed upon him by the judge: in each individual case, applying the maximum of the alleviation of which that particular case is susceptible. To all the several modifications, of which this hardship is susceptible, to apply one and the same modification of this process—is about as reasonable as it would be to apply, to every species of disease, one and the same medicine.

Of the modifications of which this process is susceptible, we shall presently have occasion to present a view to the Honourable House.

On each occasion, to the circumstances of the individuals in the individual case, does the nature of things render the adaptation of it necessary: and on no one occasion, under the existing system, can it be thus adapted.

In some cases, of which the present case is one, on the *defendant;* but in other cases, and on the occasion of every suit in the *first* instance, that is to say at the *outset* of the suit, on the *plaintiff*, does the obligation require to be imposed. In each such instance, to the elicitation of the same individualizing circumstances, the examination of the individual by the judge himself, is necessary: and to this process, (one exception excepted, of which presently,) not more unquestionable can be the abhorrence of the most profitable *malâ fide* suitor, than, under the existing practice, that of an English judge.

On each occasion, the subserviency of the operation to the purposes of justice will depend, upon the proportion of the hardship of being subjected to the particular obligation in question, and the hardship which, were it *not* imposed, might have

place: *probability* being, in both cases, taken into account.

As to incarceration and confinement, the more extentious and vexatious the modes of them respectively are, the more urgent is the motive, by which the sufferer is impelled, to make choice of this *bail-finding*, or any other, mode of escape from them: escape, perpetual or temporary only, as the case may be: choice, that between the fire and the frying-pan. Whichever it be that is embraced, the exigencies of the lord chief justice were of course effectually and abundantly provided for: from the bailing process, fees upon fees: from the incarceration, a vast mass at once in the shape of patronage. Forty thousand pounds has been stated as having been refused: on the occasion of the recently alleged mutiny, from 8,000*l.* to 10,000*l.* a year stated as being the profit of the jailor. To ascertain in each case the quantum of the enjoyment extracted by these two associates from the misery of the many—the quantum and thence the proportion—is among the operations, the performance of which we beg leave, with all humble submission, to propose to the Honorable House.

Required at the hands of *plaintiffs*, the security would have kept out *dishonest plaintiffs*—Judge and Co's. best friends and customers. Of course it was not to be thought of. Hypocrisy required that the profession should be made: and so, in the language of some of the courts, it was made:—*si fecerit te securum*: sinister interest required that it should be no better than a pretence.

Performed or exacted of defendants, directly opposite is the effect of this same security: thus placed, the obligation renders the abovementioned ample service.

As to this matter—the jakes, of late so notorious by the name of the *Secondary's Office* in the city of London—this abomination, with the immense mass of filthy lucre at the bottom of it, and the forty years' patience of the constituted authorities under the stench of it, speaks volumes.

To the case in which the process of taking examinations was, and is, an object of abhorrence to the judge, an objection has just been alluded to as having place. It is this. To the sight of mere *parties*, and in particular in the situation of plaintiffs, at the outset of the suit, at which stage the examination might nip it in the bud, abhorrence unassuageable:—to persons coming in, at a stage at which the suit is established, and the examination can have no such injurious effect, open arms and welcome. Why this difference? Answer: At the first stage, the examination would exclude fees: at this subsequent stage, it necessitates fees.

To the performing or hearing the examination of a party in relation to the matter of his suit, the horror of an English judge is, as above, insuperable. To the hearing and conducting the examination of the same man under the name of a *Bail*, in relation to a matter foreign to the matter of the suit,—repugnance none. Cause of difference, the so oftened assigned universal cause. Examination of the party, the time being that of the outset of the suit, would, as above, nip the fee-harvest in the bud: examination of bail, gives increase to it.

After all, it depends upon incidents—incidents too intricate to be here developed—whether it is by the four sages—or now of late day, one of them—that the opposition and eventual justification—so the examination is called of the bail—shall be per-

formed, or by some attorney, without the benefit of that same scrutinizing process.

The attorney is an under-sheriff;—the under-sheriff of the county in which, as above, the species of egg called the *venue*, has been *laid*, or into which it has been *removed*.

The under-sheriff is, on every occasion, the deputy of the sheriff. The sheriff is a great land-owner who, (every year a fresh one,) is appointed by the king: a servant who, in the teeth of reason and scripture, is appointed to serve not two only, but twice two masters: that is to say, at the three Westminster-hall common law courts, with the addition of the court of general sessions of the peace.

To this same business, as well as to all business but that of parade, the sheriff contributes—what a Roman emperor used to contribute to a victory gained at a thousand miles distance—*auspices:* the sheriff, auspices: the attorney, mind and legal learning: legal learning an accomplishment, in which, authorised by their sanction, the *one*, in so inferior a degree learned thinks it not *robbery* to be equal to the *four* sages.

If, with the requisite amendments, necessitated by change of times, the system of local judicatories were restored,—each judge would, for all purposes, be provided with his own ministerial subordinates: and for all of them he would be responsible.

In the city of London, the acting functionary under the sheriffs is stiled *the secondary*. Forty years of depredation, production of so many unheeded mountains, heaped up one upon another, of correspondent misery, have at length attracted to the subject the attention of the local authori-

ties. But, while eyes are shut against causes, eloquence may abound, effects all the while continue undiminished.

Moreover, in the same bailing process there is a gradation: witness the phrases *bail below*, and *bail above*. Bail *below*, are bail whose aptitude is established by the attorney. Bail *above*, are bail whose aptitude, after or without opposition, is established by the four sages. Bail *above* are, in some cases, the bail *below*, thus promoted: in other cases, a fresh couple.

Above and *below* together, bail generate *bail-bond:* bail-bond, *assignment* thereof, with eventual suit: bond, assignment, and suit—fees. To justice, use for bail and assignment the same as for an old almanack.

From these particulars, imperfect as they are, some conception, how inadequate soever, may be formed, of the proportion in which the aggregate property, of all the unfortunates so arrested, is transferred from the ordinary and undignified destination of operating in satisfaction of debts, to the dignified function of contributing to the fund provided for the remuneration of legal science.

Note here, that he who makes a prudent use of the offer so liberally held out by the judges to every man—the offer thus made to ruin for him, on joint account, as many men as he wishes, will take care that the debt sworn to shall be greater than the utmost sum, for which, for love or money, bail can, by the destined victim, be procured.

Here ends our exposition, and we humbly hope the sufficient exposure, of the devices, by the too successful practice of which, the attainment of the

ends of radically corrupt judicature have been substituted to that of the ends of justice.

Praying thus for justice, and *that* justice accessible, we proceed to pray for the means necessary to the rendering it so: rendering it so, to all of us without exception. In particular,—of the arrangements, which, in our eyes are calculated to produce that so desirable effect, and for the establishment of which we accordingly pray,—a brief intimation is presented by the propositions following:—

I. First, as to the JUDICIARY ESTABLISHMENT.

1. That, for suits of all sorts, criminal as well as civil, there be two *instances*, or say *stages*, or *degrees* of jurisdiction: stile and title of the judges, before whom the suit is brought in the first instance, *judge immediate*, of those before whom it is brought in the second instance, or say in the way of *appeal, judges appellate*.

2. That with two exceptions, and these as limited as the nature of the service will permit, to each judicatory, cognizance be taken of all sorts of causes: those included, cognizance of which are at present taken by the aggregate of the several authorities by which judicature is exercised: which courts will have to be abolished, as soon as the causes respectively pending before them, shall have been disposed of. This—to exclude complication, uncertainty, collision, delay, and useless expence.

3 That, these exceptions, and these the only ones, may be the following:—*military* judicatories, for the maintenance of discipline, land and sea service included: and *ecclesiastical* judicatories, for the maintenance of ecclesiastical discipline, on the part of ecclesiastical functionaries, belonging to the established church.

4. That, for taking cognizance of suits in the first instance, judicatories may be established in such number and situations, that, by an individual whose house is the most remote from the judicatory which is the nearest to it, the portion of time, during which in the day in question the justice chamber is open, may be passed by him therein without his sleeping elsewhere than at his own home: and that accordingly no individual may have more than twelve miles or thereabouts to travel in order to reach his own judicatory.

5. That, as in the existing principal court, there be not, in any instance, sitting at the same time any more than one single judge. This, for individual responsibility—the sole effectual—as well as also for saving expence and delay by mutual consultation and argumentation.

6. That, to obviate delay and failure of justice, every such judge be empowered and obliged to provide substitutes, styled as in Scotland, *deputes*, one or more, having for their sole remuneration the prospect of being constituted *judges principal:* and that when there has been time for a competent length of probation, no man, who has not served as depute, shall be capable of being constituted judge principal, in which way the provision of *judge power* will be as it were elastic, adjusting itself at all times to the quantity of the demand: judges, thenceforward, none but such as have served an apprenticeship to pure justice, and not to the indiscriminate defence of right and wrong, as at present.

7. That, seeing that, if the power of deputation be conferred as abovementioned, hands in number sufficient for every exigency, need never be wanting; every judicatory in the kingdom will

hold its sittings every day in the year, without exception, unless needless delay and denial of justice are not deemed more consistent with regard for justice on some days than on others: and that no exception be made by the *sabbath*, unless and until it shall have been proved that the God of justice is indifferent to justice, and that he who was content that an *ox* or an *ass* should be delivered out of a pit, would be displeased at the animals being delivered out of the hands of a wrong-doer; and that the sale of mackerel on that day is a work of more urgent necessity than the gratuitous and uninterrupted administration of justice; lastly, that no exception be made by the night time, unless, and until, a night shall have been pointed out during which injustice sleeps; in which so may justice likewise; seeing moreover that to certain purposes, under the name of *police*, *justice* is, in certain places, in that part of the twenty-four hours, even under the existing system, actually administered.

8. That, to each such judicatory, be attached a competent set of *ministerial officers*, sufficient for giving, in all ordinary cases, execution and effect to its mandates: but, with power, as at present, in case of necessity to call in aid all persons in general, the military force included. This, instead of the sheriff, that one man who, hitherto, in despite of scripture and reason, has been employed to serve not merely two, but twice two masters. This, to exclude the complication, with the consequent collision, litigation, useless expence, delay, and vexation, which from this cause have place at present.

9. That, of these ministerial officers, such as are now employed in the intercourse between

judges on the one part, and the respective subordinates, as well as parties and witnesses on the other part, such as are now empowered to use force, as well as to officiate without force, be distinguished by some such name as *prehensors* or *arrestors;* the others distinguished from them by the name of judiciary messengers, or, for shortness, *messengers:* and that for trustworthiness and economy, the business of *message-carrying* be, as far as may be, performed by the machinery of the *letter post.*

10. That the remuneration allotted to judiciary functionaries, ministerial as well as magisterial, be, the whole of it, in the shape of *salary;* and that, by no functionary belonging to the judiciary establishment, money or any other valuable thing or service, under any such name or in any such quality as that of a *fee*, be, by any judicial functionary, receivable on any occasion, on any pretence. This, to exclude the expence, delay, extortion, and vexation, which have ever hitherto been produced by the multiplication of judicial instruments and operations for the purpose, and with the effect of giving correspondent increase to the masses of fees.

11. That such remuneration be paid, the whole of it, at the expence of the public at large; no part of it at the expence of any individual or body of individuals interested: fines for misconduct as below, excepted. This, to avoid excluding of any person from the benefit of justice: every person who in the suit in question is not able to pay the whole mass of the fees exacted on the occasion of that suit, being at present, as well as having at all times hitherto been thus excluded: and because that which the rest of the community enjoy

without, litigants do not obtain otherwise than by and with litigation, with its vexation and expence, the benefit of justice.

12. That, to obviate the danger and suspicion of partiality through private connection, no judge-immediate principal shall remain in the same judicatory for any longer term than *three* years, or thereabouts: and that, for this purpose, an appropriate system of *circuiting* be accordingly established: but that, for continuing in an unbroken course the business of recordation, or say *registration*, the functionary by whom it is performed be stationary.

13. That, in every justice-chamber, for the better administering of that security, which it is in the power of *public opinion* to afford, for conduct apt in every respect on the part of judges,—commodious situation be allotted for two classes of persons, under some such name as that of *judiciary inspectors:* the one, composed of suitors, waiting for their suits to come on, say *expectant suitors* or *suitors in waiting;* the other, of *probationary lawyers*, of whom presently.

14. That, in all sorts of suits, without exception, a *jury* shall be employable: but, to lessen the aggregate weight of the burthen of attendance,—not till after an *original hearing*, before the judge sitting alone, nor then but by order of the judge, whether spontaneous, (for example, for the purpose of confronting such of the evidence as requires to be confronted), or else at the requisition of a party on one side or the other; in which case it shall be obligatory on him to order and carry on a fresh hearing, termed a *recapitulatory hearing*, or say a *new trial*, before a jury, organized in manner following.

15. That in cases of all sorts, one excepted, all functions belonging to the judge, one excepted, shall be exercisible in common with him, by the jurors: the *imperative*, or say the effectuative, being that on which the effect of the suit depends, being, for the sake of individual responsibility, allotted exclusively to the judge. Functions thus exercisible, these:—1. *Auditive*, applied to every thing that is to be heard. 2. *Lective*, applied to everything that requires to be read. 3. *Inspective*, applied to everything that requires to be seen. 4. *Interrogative*, applied to all questions that require to be put. 5. *Commentative*, applied to all observations which they think fit to make. 6. *Ratiocinative*, applied to whatever reasons they think fit to give for anything which they say or do. 7. *Opinative*, exercised by declaration made of opinion, in accordance or discordance with the opinion which, on the occasion of the exercise given to the effectuative function, is pronounced by the judge: exercised collectively, as by juries under the existing system, the *opinative:* exercisable individually all the rest.

16. That the class of cases, in which the *effectuative* function, as above, shall be exercisible by the jury, so far forth as to render of no effect a judgment of *conviction* if pronounced by the judge alone, shall be that in which the higher functions of government, as such, have, or may naturally be supposed to have, a special personal interest: for example—*treason, rebellion, sedition, defamation* to the injury of a public functionary, or set of public functionaries, as such, and the like.

17. That, for lessening the burthen of attendance on juries,—instead of a number so super-

fluous as twelve, a lesser number, and that for the sake of a majority an *uneven* one,—that is to say, *three*, or at the utmost, *five*,—be employed: by which arrangement the practice of perjury on the part of juries, in a number varying from one to eleven,—perjury, to wit, by falsely reported unanimity, with torture for the production of it, will be made to cease: for the better direction, one out of three, or two out of the five, being of the class of special jurymen: the foreman being to be of this class.

18. That the institution of a *grand jury*, with its useless delay, incomplete, secret, naturally partial, and inconsistently, though happily, limited, applicability,—be abolished.

19. That, for receiving *appeals* from the decrees and other proceedings and conduct on the part of the abovementioned judges *immediate*, there be judicatories *appellate*, all single seated, in such number as experience shall have shewn to be necessary: if more than one, station of all of them the *metropolis: that* being the central spot, to which persons from all parts of the country have occasion to resort for other purposes; and at the same time *that* in which the best-formed and most effective *public opinion* has place — public opinion! most influential and salutary check upon the conduct, and security for the good conduct, of these as well as all other public functionaries: and, as below, no evidence being proposed to be received other than that which having been orally elicited in the court below, and consigned to writing, no attendance by parties or witnesses will, on this occasion, be necessary. And that, after the outset of the here proposed change, no person being capable of

serving as judge appellate, who has not for a certain length of time served as judge principal immediate.

20. That, in each judicatory, as well appellate as immediate, for officiating in suits in which government, on behalf of the public at large is interested,—there be a functionary, under the name of the *government advocate*, with *deputation* and on the part of the principal, *migration*, as in the case of the judge: and superordinate to them all, a *government advocate general*.

21. That, for administering professional assistance to suitors who, by relative *weakness*, bodily or mental, are disqualified from acting as plaintiffs or defendants, for themselves,—or, by relative indigence, from purchasing assistance from professional hands,—there be in each judicatory a public functionary under the name, for example, of *eleemosynary advocate:* also with deputes, and migration, as above.

22. That, considering how opposite in their nature are the duties and habits of the judge and the advocate,—*impartiality* the duty of the one, *partiality* the duty, and purposed misrepresentation the unavoidable practice, of the other,—no functionary be transferable from one to another of these three lines of service.

23. That, at the head of the judiciary establishment, there be placed a single functionary, styled, as in other countries, *justice minister;* at whose recommendation, subject to his majesty's pleasure, as at present by the *chancellor*, shall be filled up all other judicial situations.

24. That *accusations* or *complaints* made against a judge, immediate or appellate, on the score of official delinquency, or relative inaptitude from

any other cause, be heard and determined by the *justice minister*.

25. That accusations or complaints, made for the like cause, against the justice minister, be heard and determined by the *House of Lords:* and that, on that consideration, no person, during the time of his officiating in the situation of *justice minister*, shall be capable of sitting in the *House of Lords*; nor yet in the *House of Commons*.

26. That, considering the inherent and indefeasible comparative inaptitude of so numerous a body for the purpose of constant and protracted judicature,—in *all* cases, and the next to universal habitual non-exercise of this function on the part of their lordships in *criminal* cases;—and that in *civil* cases, their jurisdiction is, in so large a proportion, at present employed, nor could ever fail, to be employed, as an engine of delay and expense, operating to all his majesty's subjects but a comparatively few as a denial of justice,—it may please their lordships to confine the exercise of their judicial function to the abovementioned cases, with the addition of such criminal cases, in which, at present, a member of their own House is party defendant:—thus making a generous sacrifice of their uncontested rights on the altar of justice.

27. That, when it has been covered by a coating of *legislature-made* law, the field of legislation be preserved from being overspread by an overgrowth of *judge-made* law: for interpretation or melioration, amendments proposed *in terminis* by judges, on the occasion of the several suits, being, by appropriate machinery attached to the code, of course, unless negatived by a committee of the one House or the other, and that, when these arrangements have been made,—no reference, for

any such purpose as that of interpretation, to any thing said by a judge in any one suit, be permitted to be made in any other suit. Of this arrangement, another use will be—that of their applying the necessary preventive to the mischief, which might otherwise be produced, by discrepancy between the decrees of the several appellate judicatories, if more than one. This, when the field of law has been covered by *legislature-made law:* and, in the mean time, (though not equal facility,) equal necessity will there be, for the like provision, during the time that, to so immense an extent, the field has no other covering than that which is composed of *judge-made law:*—of judge-made law—that spurious and fictitious kind of law, if such it must be called, with the dominion of which, so far as it extends, all security is incompatible.*

So much as to the *Judiciary Establishment:* follows what we humbly pray in relation to *Procedure.*

28. That, as in former times, no suit shall receive its commencement, but by the personal appearance of some individual in open judicatory, which individual shall be responsible for his conduct in relation thereunto: and, to that purpose, shall, before he is heard for any other purpose, make declaration—not only of his present abode, but of such abode or abodes, at which any mandate issued by the judge, may be sure to reach him, at all times, down to that of the termination of the suit: that, for the purpose of all ulterior judicial processes, every missive addressed to him

* Drawn up for this purpose, a complete plan of operations, expressed *in terminis*, is already in existence.

be considered as having reached him: except in case of any such accident as, without blame on his part, may come to be alleged by him for the purpose of *excuse:* saving to such applicant the faculty of changing such address, from time to time, on giving timely information thereof.

29. That, exceptions excepted, the person so applying be a party whose desire it is to be admitted in the character of pursuer: of which exceptions, examples are—1. Giving simple information of an offence, appearance on behalf of any person or persons.—2. Purpose of the appearance, giving simple information, without desire to be admitted *pursuer:* say pursuer, in all cases, instead of plaintiff in civil cases and prosecutor in criminal cases, as at present.

30. That for non-compliance with judicial mandates, an all-comprehensive system of appropriate excuses be looked out for, and on the supposition of the verity of the alleged facts, allowance given to them.

31. The person by whom the matter of excuse is submitted, will in general be the person to whom the mandate is addressed: but, in several cases, such as sickness, absence, &c. from other persons, excuses for him must of necessity be accepted.

32. That the institution of *excuse-giving* which, under the name of *casting essoins,* had place in former days, when the attendance of parties, instead of being as now prevented, was compelled—be, for this purpose reviewed: and the extension which the exigence of justice requires, be given to it.

33. That, on every occasion, the proceedings be regulated by regard paid to *convenience,* to wit, the mutual convenience of all individuals con-

cerned, parties and witnesses: this being a matter which, they being on all occasions in the presence of and under examination by the judge, can, on each occasion, be ascertained: whereas, under the existing technical system, the rule being framed, without the possibility of knowing anything of the distinguishing circumstances of individual persons and things, the necessary consequence is—that, in a vast majority of instances, the convenience of individuals, some or all, is made the subject-matter of a needless and reckless sacrifice.

34. That, all judicatories being sitting every day in the year without intermission, evidence, in so far as indication of its existence has been afforded by the applicant, when admitted as pursuer, be, in such order as in each suit shall be indicated by the exigency of the individual case, from each source, as soon as obtainable, called for and elicited: and this without distinction, as between co-pursuers, co-plaintiffs, defendants, and extraneous witnesses on both sides.

35. That to the institution of *security-finding* in general, and that of sponsorship, or say *auxiliary bondsmanship* in particular,—be given the whole extent, of the application and good effect, which the nature of things allows to be given to them.

36. That, accordingly, all the sorts of *occasions* on which, and all the *modes* in which, it is capable of being employed, be looked out for:—for the purpose of employing, on each individual occasion, that mode which may be employed with the most advantage to all interests concerned.

Of *modes* of such security capable of being employed, examples are the following.

I. Intervention of *bondsmen*, stiled *auxiliary bondsmen*, one, two, or more, according to the

magnitude of the sum regarded as requisite, and their capacity of contributing to make up such sum; each individual contributing such part as his circumstances enable him, and his inclination disposes him, to contribute: as to the party's joining in the bond, it would, under the here proposed system, be a needless and useless ceremony, the judicatory having his property as effectually at command without it as with it.

II. *Deposit* of *money* by the *party* in the hands of the registrar of the judicatory.

III. *Deposit* of *money* by these same *bondsmen* in the hands of the registrar.

IV. *Deposit* of any *moveable* subject matter or subject matters of property of considerable value in small compass, in the hands of the registrar.

V. *Impignoration*, or say *pledging*, of any *immoveable* or any incorporeal subject matter or subject matters of property belonging to any such auxiliary bondsmen.

VI. With *consent* of the party, *ambulatory confinement* of his person, he staying or going where he pleases, so it be in the custody of a person or persons appointed for that purpose.

VII. Under the same condition, stationary confinement in a *place* other than a prison.

VIII. At the instance of the party himself, imprisonment. Notwithstanding its afflictiveness, it may happen to this security to be necessary; for example, in a case where, security being deemed necessary to be exacted of the other party, and the finding of that security highly afflictive, the party in question is by strangership, relative indigence, or bad character, disabled from finding any security less afflictive.

37. Of *occasions*, requiring that such security be exacted, examples are the following:

I. At the charge of a defendant, need of security to a plaintiff, the defendant being on the point of *expatriating* either his person or his property, or both, and the value of what is demanded at his charge bearing a large proportion to his property: at the same time that, supposing the demand groundless, or the security needless, the wrong done to the defendant, if either his person or his property were detained, might be ruinous to him: as for instance, the whole of it being on the point of being expatriated on a commercial speculation in a vessel engaged by him for that purpose, and he about to embark for the purpose of superintending the disposal of such his property.

II. On the occasion of the establishment of a mode of *intercourse* as above, with the judicatory during the continuance of the suit, want of trustworthiness may produce the need of the exaction of security, at the charge of the individual in question.

III. Whenever, for any purpose, it may be requisite that security be exacted at the charge of a party on either side of the suit, need may also have place for the exaction of a counter-security, at the charge of the party applying for it.

Note here that of the infinite variety of *occasions*, on which the need of *security-finding* is liable to have place, the practice of *bailing* is but one, and on each occasion the chances of its being the least inconvenient one are as infinity to one.

38. That, in regard to *evidence*, whether the *source* be *personal*, *real*, or *ready written*, no distinction be made between *parties* and *witnesses* who are *not* parties—say *extraneous witnesses:* that is to say,

that from both, it be alike receivable and exigible: seeing that so it is in the existing *small debt courts*, in the aggregate of which more suits have place than in all other courts put together: in regard to exaction, penal suits not excepted: seeing that, in the equity courts, such exaction has place, though, by means of it, the richest proprietor may be divested of the whole of his property; and instances are known, in which rather than submit to such a loss men have sustained imprisonment for life.

30. That the mode employed in the elicitation of evidence, (under which appellative is included every averment made either by an applicant or by a party on either side) be, in each individual suit, according to the demands of that same suit, in respect of general convenience, one or more of the three modes following: to wit, 1. The *oral*, elicited in the originating judicatory; 2. The *oral*, elicited in another, say a *subsequential* judicatory, to which, for the convenience of a party resident in the territory thereof, the inquiry is, for the purpose of his examination, transferred: 3. The *epistolary*, by means of interrogations approved of by the judge of the originating judicatory.

40. That no response in the epistolary mode be received, otherwise than subject to the eventual examination of the respondent in the *oral* mode, at any time, should demand have place for such examination, in the judgment of the judge.

41. That, instead of being applied, as in equity practice, without necessity, and to the exclusion of the *best*, that is to say the *oral* mode, the *epistolary* mode of eliciting evidence be no otherwise employed than for one or other of two causes: namely, 1. Either for exclusion of preponderant evil in the shape of delay, expence, and vexation. 2. Or of

necessity, elicitation in the oral mode being impracticable: as for instance, where at the time in question the residence of the person addressed is in the one or the other of the sister kingdoms, in a distinct dependency, or in the dominions of a foreign state: in all which cases the expence and delay of commissioners sent to the places in question will thus be saved.

42. That for avoidance of perjury and abolition of the encouragement given to falsehood, by the distinction between statement upon *oath*, and statement to which, though made without oath, efficiency, equal to that which is given to statement upon oath, is, as above shewn, in many cases given, —no oath shall, on any judicial occasion, or for any eventually judicial purpose, be in future administered. But that every statement made on any such occasion, or for any such purpose, shall be termed an *affirmation*, or *asseveration;* and that, for falsehood in respect of it, whether accompanied with evil consciousness, or say *wilfulness*, or with temerity, or say culpable heedlessness, any such punishment purely temporal shall be appointed, as the nature of the case may be deemed to require: consideration in each case had, of the nature of the offence, to the commission of which such falsehood shall have been deemed subservient: and that, as often as, in the course of the suit which gave rise to the falsehood,—all the evidence that can bear upon the question of falsehood has been brought forward, conviction and punishment may have place, even on the spot, without the formality and expense of an additional suit on purpose, just as, at present, in the case of an act, styled an act of *contempt*, committed in the face of the court.

43. That, for rendering substantial justice, and for avoidance of needless multiplicity of suits, statements, and other evidence, relative to the whole of a series of wrongs, be elicitable on the occasion of one and the same application: such satisfaction, in so far as it is in a pecuniary shape, being adjusted to the state of pecuniary circumstances on both sides: this, where it is on one side only, that complaints have place: and that, where there are two parties, between whom, for a greater or less length of time, a quarrel has had place, each, in the way of recrimination, may elicit evidence of divers wrongs, of different sorts, at different times, from the other, in which case what, on the aggregate, on the score of compensation, is due from the one forms a *set-off* to what is due from the other,—satisfaction be accordingly allotted for the balance: as also, on one of the parties, or both, if, in the judgment of the judge, the case requires it,—a fine be imposed for the benefit of the public, on the score of the portion of the time of the judge and his subordinates, which, at the expense of the public, has thus been occupied.

44. That, with the exception of suits, in which, by reason of their comparative unimportance, it is purposely left unpreserved,—all evidence, elicited in the *oral* mode, shall, under the care of the *Registrar* of the judicatory, be minuted down as it is uttered: and that of this, with the addition of any such evidence as may have been adduced in the *ready-written* form, or elicited in the *epistolary* form, be constituted the main body of the document, which, under the name of the *Record*, shall, in case of *appeal*, be transmitted from an immediate to the appellate judicatory: and that,

for this purpose, the mode in which the minutations are made, may be that in which, under the name of the *manifold* mode, is already in use, and in which legible *copies*, say rather *exemplars* to the number of eight or more, are written at once: whereby all danger of error, as between one such exemplar and another, and all expense of the skilled labour requisite for revision, are saved.

45. That, towards defraying the unavoidable costs, in the case of persons unable to defray them,—a fund be established, under the name, for example, of the *Helpless Litigant's Fund.*

46. That all factitious costs being struck off, and unavoidable costs transferred on the revenue,—and professional assistance, in so far as needed, provided gratuitously as above,—*fines*, or say *mulcts*, be imposable on any party in proportion as he is in the wrong; in which imposition may be, from a degree of amplitude, far beyond any which, under the existing system would be endurable, if added to the burthen at present indiscriminately imposed under the name of *costs* on the injurer and the injured: and that of these fines the produce may constitute the basis of the *Helpless Litigant's Fund:* in the case of the wrong-doer, the requisite distinction being all along made, between evil consciousness and rashness, or say, culpable heedlessness, not accompanied with evil consciousness: and that, for any incidental misconduct manifested in the course of the suit, such fines be moreover imposable, even on a party who, on the main point, is in the right: so also on an extraneous witness: not forgetting, however, that where the case presents to view a party specially injured, no such fine can with propriety be imposed, unless more be needed on the score of punishment, than

is due on the score of compensation: forasmuch as the burthen of compensation produces as far as it goes, the effect of punishment: the effect—and, commonly, even more than the whole of the effect: forasmuch as by the consideration that from his pain his adversary is receiving pleasure, will naturally be produced a chagrin, which cannot have place in the case when the profit goes into the public purse.

47. That, as well of the judiciary establishment code, as of the judicial procedure code, the language be throughout such as shall be intelligible to all who have need to understand it: no word employed but what is already in familiar use, except in so far as need has place for a word on purpose: and that, to every such unavoidably-employed word, be attached an exposition, composed altogether of words in familiar use: and that, throughout, the *signs* thus employed be, of themselves, as characteristic as may be of the *things* signified.

Now for the general character of the two opposite systems: that which is in existence, and that which is herein, as above, humbly proposed as a succedaneum to it.

Behold first the existing system.

Justice, to Judge and Co. a game; Judge and Co. the players: stake, in different proportions, the means of happiness possessed by the aggregate of all litigants.

Established a universal chain of tyrannies: established, by power to every individual to tyrannize over every other, whose circumstances are to a

certain degree less affluent: in every case, instrument of tyranny, utter ruin: utter ruin, by the enormity of the expence.

Alike well-adapted to the purpose of the oppressor, that of the depredator, and that of him who is both in one, is this same instrument. This in hand, a man may oppress, he may plunder, the same person at the same time.

Considered with reference to its real ends, could any more accomplished aptitude — considered with reference to its pretended ends, could any more accomplished inaptitude be obtained by a premium directly offered for the production of it?

So much for the existing system. On the other hand, such, as hath been seen in brief outline, is the system of arrangements dictated by a real and exclusive regard for the happiness of the community, in so far as it depends upon the application made of the power of judicature. We invite the well-intentioned,—we challenge the evil-intentioned,—to elicit and hold up to view, all proofs and exemplifications of its inaptitude. Whatsoever alleged imperfections have been found in it, will of course, in case of adoption, be removed by the constituted authorities. But, considered as a whole, we cannot but flatter ourselves, that, in quality of a subject matter of adoption after such amendments made, no arguments will be found opposible to it, other than ungrounded assertions, vague generalities, narrow sentimentalities, or customary and already exposed fallacies.

Now for an apology: an apology for the freedom with which the vices of the existing system has been subjected to exposure, and its utter inaptitude for its professed purpose, we trust, de-

monstrated. In this inaptitude, coupled with the aptitude of the proposed succedaneum, will be found the best, and we humbly hope a sufficient apology for this boldness, how striking soever the contrast it forms with accustomed usage.

Another apology we have to make is, that which is so undeniably requisite for the freedom with which, in addition to the character of the system, that of the class of persons concerned in the administration of it is held up to view. For this liberty, our plea is that of indispensable necessity. For unhappily, the state of manners considered,—on their part, at any rate on the part of the great majority, it is not in the nature of man that this or any other system should be received by this class, otherwise than with opposition, and that opposition hostile and strenuous in proportion to the serviceableness in the thus exposed system, and the disserviceableness of the here proposed system, to their respective real or supposed particular interests: on which occasion, what again is but too natural, is, that beholding with serenity, and even delight, the torments out of which, and in proportion to which, their comforts are extracted by it, the unction of their panegyrics will continue to be poured forth upon the thus exposed system, in proportion to its need of them, which is as much as to say, in exact proportion to its mischievousness.

Thence it is, that the doing what depended upon us, towards lowering, as far as consistently with justice may be, the estimation in which their authority is held by public opinion,—because, how painful soever, an indispensable part of this our arduous enterprise:—assured as we could not

but be, of its finding that so influential authority, in its whole force, with all its weight, on every point pressing down upon it.

Of an imputation which will of course be cast upon the line of argument thus taken by us, we are fully aware. This is—that the weakening the force and efficiency of the whole power of the law is a natural effect—not to say the object—of these our humble endeavours.

To this charge we have two answers.

One is that, from this cause, no such consequence will really follow: the other is—that, while by this same cause, the power of the law will not be diminished, the security for its taking its proper direction will be increased,

First, as to the apprehension of the evil consequence. Produced by a superficial glance, natural enough this apprehension must be acknowledged to be: by a closer view, it will, we trust, be dispelled.

That which produces the effect aimed at by the law, what is it? Is it anything other than the expectation, that, on contravention, the inflictions at the disposal of the functionaries in question will accordingly be applied to the contraveners? But of any such infliction, when the decree for it has passed, will the application depend upon public opinion? No surely: on no such fluctuating basis does public security rest: the persons on whom it depends for its efficiency, are, in the first instance, the judges themselves; in the next place, in case of need, the supreme authority, with the whole force of the country in its hands. When a judgment has been pronounced, is it in the power of this or that individual or individuals in any num-

ber whatsoever, to prevent the execution of it? No assuredly.

Now, as to the desirable good consequence. This consists in the giving strength to the limitative check, applied to the power of the judge, by the power of *public opinion*—sole source from which, on the several individual occasions, this so necessary and from all other hands unobtainable service can be received. Yes; we repeat it—sole source. True it is that, in theory, and by the practice of times now past, *impeachment* is presented in the character of an oppropriate remedy: hands by which it is applicable, those of the Honourable House. But, in fact, only in appearance is it so. On no other condition than that of leaving—and that to an indefinite degree—inadequately done or even altogether undone, its superior and altogether indispensably *legislative* duty,—could be undertaken by the House, this judicial, and as such inferior and comparatively unimportant function. Witness the testimony so amply afforded by experience: witness the Warren Hastings impeachment: witness the Melville impeachment. Take away the check applied by the tribunal of public opinion, here then is the power of the judge, nominally and theoretically controlled, really and practically uncontrolled: and of this same uncontrolled power what sort of use has been made, and so long as it continues upon its present footing, can not but continue to be made, has, we humbly trust, been sufficiently seen already.

Well then: of the power of public opinion in consequence of the information hereby afforded to it, what is the application reasonably to be expected? The universal power of the whole country

—will it employ itself against itself? But, the lower the trustworthiness of these same functionaries is in the scale of public opinion, the less efficient, on each occasion, will be capable of being made its resistance to this indispensable check:—the only one, as hath been seen, from which any control can be experienced by it.

Undangerous in perfection, gentle in perfection, continually improving, self-improving,—what other power can be so completely incapable of being abused as this? Only by the check applied by it can the efficiency of a judge's sinister leanings be lessened: only by the force of reason can the direction taken by this guardian power be determined.

As to any such fall as that just mentioned,—whatsoever may be the sensation produced by it,—in their predecessors and themselves, these functionaries may behold the original authors whom they have to thank for it. Instead of being what it has ever been and continues to be, and never can but be,—had the use made of their power been the direct reverse of what it has been,—no such state of the public mind,—no such sensation in the individual mind, could have had place.

While speaking of this same downfall, it is not without unfeigned regret that we can contemplate the hurt, which, by this our humble Petition, cannot but in a greater or less degree be done to the interests and feelings of individuals: and this, not only eventually by the establishment of the here proposed system, but actually and immediately by the picture here drawn of the causes by which the demand for it has been produced.

But well-grounded, as these their apologies cannot be denied to be, no reason will they afford

why the exertion necessary to the putting an end to the abuses apologized for should in any way be slackened. The surgeon, with whatsoever concern he may behold the sufferings of the patient under the necessary caustic, cannot hold himself exempted by the consideration of them from the obligation of putting it to its use.

Nor yet under these regrets, for this hardship on individuals, is alleviation, independently of that afforded by the contemplation of the all-comprehensive benefit to the public, altogether wanting.

Classes, the interests of which would be affected by the proposed reform, these two:—the professional and the official.

As to the professional class, not to near so great an amount, if to any, as at first view might be supposed, would be the detriment to their pecuniary interests. For, long would it be before their situation could be in any way affected by the change. Suppose the matter already before a committee of your Honourable House. Long would it be, before the reforming process would, by a bill brought in in consequence, so much as take its commencement: long, beyond calculation, notwithstanding the utmost possible exertions employed in giving acceleration to it, would be the time occupied in the continuance of that same process: long, even supposing both houses unanimous in their approbation of the measure considered in a general point of view: and how much further could it fail of being lengthened, by the exertions which it would be so sure of finding everywhere opposed to it—opposed by the best exercised and strongest hands? Such is the length of time during which all such professional men as the bill found already in possession of business

would be enjoying the fruits of it, without diminution or disturbance.

So much for that class. All this while, all men who, but for the apprehended fall off, would have engaged in the profession, will have had before their eyes the prospect of it, and the notice and warning given by that prospect. On the other hand, in like manner will these same eyes have had before them the augmentation (and it has been seen how ample a one) given to the number and value of the aggregate lists of judicial situations. Correspondent will accordingly be the number of those whose destination will, by that prospect, be changed from the indiscriminate defence of right and wrong, in the capacity of professional lawyers, to the pure pursuit of the ends of justice, in the situation of judge. Moreover, proportioned to the amount of this secession would be a further indemnification to those already in the possession of business: so many men whose course has thus been changed, so many competitors removed.

The class upon which, chiefly, the loss would fall, is the *attorney* class. A certain class of suits there is by which, on the present footing, business with its emolument is afforded to the attorney, none to the advocate class: business, for example, begun, altogether without prospect of successful defence, and thence carried through actually without defence: action for example, with or without arrest for indisputable and certainly procurable debt. Barristers not deriving any profit from the present existence, would sustain no loss from the cessation of these actions.

But as to the length of the interval before commencement, as also the exclusion put upon

competition, in these advantages the attorney class would possess an equal share.

As to the official class, nothing whatever in a pecuniary shape can any of its members have to apprehend from the change: from all such apprehension they stand effectually secured by the application so constantly made of the *indemnification* principle, to the interest of men of their order at any rate, whatsoever ground of complaint, on this score, may, in but too many instances, have been felt by functionaries belonging to lower orders.

After all, of all regrets from such a source the complexion would be, what it would be if the sufferings, instead of these, were those of medical men from improvements made in the state of general health and longevity: improvement such as that made by the substitute of vaccination to inoculation: imaginable improvement by discovery made of a never-failing specific, for example, against the ague, the rheumatism, the gout, the stone, the cholera morbus, the yellow fever, the plague, or by the universal drainage of all pestiferous marshes.

Now as to the effect produceable on estimation and thence on feelings. Altogether unavoidable, and indispensably necessary to the establishment of the everlasting good, upon the all-comprehensive scale on which it is here endeavoured at,—has been the production of the transient evil upon this, comparatively minute scale. Before the running sore, kept up at present under and by the existing system, could with any the least chance of success, be endeavoured to be healed, it was necessary it should be probed, and the sinister interest in which it has had its cause, brought to light and held up to view.

Now, in the case of the class of persons unavoidably wounded, so far as regards damage to estimation, are alleviations, and those very efficient ones, by any means wanting? In the first place, comes the consideration, that what is important to them, so far from being peculiar to them, is nothing more than what has place incontestably and confessedly in all other classes of men whatsoever. In the minds of the men here in question, indeed, but no otherwise than in those of all other men, with the exception of the heroic few, prevalence of self-regard over all other regards, and this on every occasion, is among the conditions of existence: place all regard for the interest of A. in the breast—not of A. but of B. and so reciprocally, the species can not continue in existence for a fortnight. True it is, that in this or that heroic breast, on this or that occasion, under the stimulus of some extraordinary excitement, social feeling upon the scale of such an all-embracing charge, may, here and there, be seen to tower above regard for self: but, to no man can the not being a hero be matter of very severe reproach. When, therefore, as here, interest from the very first—interest real or (what comes to the same thing) imagined—has been made to clash with duty, sacrifice of duty is, with exceptions too rare to warrant any influence on practice, sure, and as such ought to be calculated upon, and taken for the ground of arrangement and proceeding, in all political arrangements.

Men are the creatures of circumstances. Placed in the same circumstances, which of us all who thus complain, can take upon himself to say or stand assured—that, in the same circumstances, his conduct would have been other and better

than that which, on such irrefragable grounds, he is thus passing condemnation on, and complaining of?

Of the existing race, whatsoever may be the demerits, they have at once, for their cause and their apology, not only the opposition in which, in their instance, interest has been placed with reference to duty, but the example set them in a line of so many centuries in length, by their predecessors: and in ancestor worship, how this our country has at all times vied with *China*, is no secret to any one.

The concluding observation how small soever may be the number of the individuals to whom it will be found to have application, is—that, to the imputation of hostility to the universal interest, by perseverance in the preference given to personal interest, it depends upon every man to remain subject, or liberate himself from it, as he feels inclined: and the more powerful the temptation, the more transcendant will be the glory of having surmounted it: and whatsoever may have been the strenuousness and length of his labours in the augmentation of the disease, ample may be the compensation and atonement made, by his contributions to the cure of it.

Such are the considerations, from the aggregate of which our regrets for the manner in which the feelings of the individuals in question cannot but be affected, have experienced the diminution above spoken of. But were those regrets ever so poignant, our endeavours for the removal of the boundless evil of the disorder would not be, (for will anybody say they ought to be?) in the smallest degree diminished, by the consideration of the partial evil thus attendant on the applica-

tion of the sole possible remedy: assuredly ours will not; nor will, as we hope and believe, the accordant endeavours of the great majority of our fellow subjects.

On this occasion, a circumstance to which we cannot but intreat the attention of the Honourable House is the uniform and almost universal silence, in which, by professional men, in bringing to view, or speaking of proposed reforms or meliorations, this universal cause of all the wrongs and sufferings produced in the field of law, has, as if by universal agreement entered into for the purpose, been, as far as depended upon them, kept out of sight. Of the several elements of appropriate aptitude as applied to this case,—intellectual aptitude and active talent are, on this occasion, assumed to be the only ones, in which any deficiency in the appropriate aptitude of the law itself in any part, has ever had its source: the only ones on which the degree of this same aptitude depends: the only ones, of a deficiency in which there can ever be any danger. As to appropriate moral aptitude, —on every such occasion, exclusively intent on the interest of the public, without so much as a thought about their own interest, in any respect, and in respect of profit in particular,—that all persons in this department sharing in the possession of power, and with them all persons engaged in the exercise of the profession, are and at all times will be, —this is what is tacitly, but not the less decidedly, assumed: assumed? and with what reason: with exactly the same as if the assumption were applied to all persons engaged in trade. Now then, in this state of things, while on every occasion universally thus referred to the wrong cause, what can be more impossible, than that the disorder should ever

receive from the sole true *recipe*, deduced from the knowledge of its true cause, its only possible remedy? Vain, however, how extensive soever,—vain at any rate, so far as regards us your petitioners—will henceforward be this so decorous and prudential silence, the nature and magnitude of the mischief, and the nature of its cause, being at length alike known to us.

As to this silence, the decorum attached to it notwithstanding, we humbly trust that in the Honourable House it will not any longer be maintained: for so long as in that sole source of appropriate relief, it has continuance, so long will all possibility of effectual remedy be excluded; and so long as the disorder continues unremoved, by no silence anywhere else can our ears be closed, or our tongues or our pens be stopt.

Yes; as to us your petitioners, the film is now off our eyes: thus wide open are they to the disorders of which we complain, and to the urgency of the demand for the remedy, which, at the hands of the physicians of the body politic, we thus humbly, but not the less earnestly, entreat the application of the only remedy.

To some it may be matter of no small wonder, how such sufferings as at all times have been experienced, should at all times have had for its accompaniment, such almost universal patience. But, in this case, patience has been the natural fruit of ignorance; the language in which these torments of the people have in this case had their instrument, being about as intelligible to the people at large, as is the gibberish spoken by the race of gipsies.

We beseech the Honourable House to ask itself whether, of the enormities above brought to view,

one tenth would not suffice to justify the practical conclusion here drawn from them? whether of a system thus in every part repugnant to the ends of justice, and injecting into every breast, with such rarely-resistible force, the poison of immorality in so many shapes, the mischief can be removed otherwise than by the entire abolition of it, coupled with the substitution of a system directed to those ends, and pure from all such corruptive tendency? whether the inaccessibility of justice be not of the number of those enormities? and whether the House itself will, henceforward, be anything better than an enemy to the community, if with eyes open, and hands motionless, it suffers that inaccessibility to continue?

For our parts—respectfully, but not the less earnestly, we conclude, as we began, with the continual, and, till accomplishment, never about to cease cry—"Holy! Holy! Holy! Justice! accessible Justice! Justice, not for the few, but for all! No longer nominal, but at length real, Justice!"

PETITION FOR CODIFICATION.

The Petition of the Undersigned,

HUMBLY SHEWETH,

THAT, in so far as our respective consciences will allow, we entertain the sincerest disposition to conform ourselves in all things to the good pleasure of those who are set in authority over us.

That, when, by any of us, a wish is expressed to know what that pleasure is, he is bid to look to *the law of the land.*

That, when a man asks what that same law is, he learns that there are two parts of it: that the one is called *Statute Law*, and the other *Common Law*, and that there are books in which these same two parts are to be found.

That, when a man asks in what book the *Statute Law* is to be found, he learns that, so far from being contained in any *one* book, howsoever large, it fills books composing a heap greater than he would be able to lift.

That if, he thereupon asks, in which of all these books he could, upon occasion, lay his hands, and find those parts in which he himself is concerned, without being bewildered with those in

which he has no concern,—what he learns is—that the whole matter is so completely mixt up together, that for him to pick out the collection of those same parts from the rest, is utterly impossible.

That, if he asks in what book the *Common Law* is to be found, he learns that the collection of the books in which, on each occasion, search is to made for it, are so vast, that the house he lives in would scarcely be sufficient to contain it.

That, if he asks who it is that the Statute Law is *made by*, he is told, without difficulty, that it is by King, Lords and Commons, in Parliament assembled.

That, if in continuation, we proceed, any of us, to ask who it is that the Common Law has been made by, we learn, to our inexpressible surprise, that it has been made by nobody: that it is not made by King, Lords and Commons, nor by anybody else: that the words of it are not to be found anywhere: that, in short, it has no existence; it is a mere *fiction;* and that to speak of it as having any existence, is what no man can do, without giving currency to an imposture.

When, upon observing that, by every *judge*, it is spoken of as a reality, and that he professes to be acting under it,—we ask whether it is not *he* that makes it? We are told that this is what no judge ever does, and that, by any of the learned judges, a question what part of the law is of his making, would be received with indignation, and resented as a calumny.

That, when, seeing men put to death, and otherwise grievously punished by order of judges, a man asks by what authority this is done, he learns that it is by the authority of Statute Law or Com-

mon Law, as it may happen: and if he thereupon asks whether, when it is upon the authority of the Common Law that the judge does this, it is not by this same judge that this same Common Law is made, he still receives the same assurance—that no judge ever makes law, and that a question what part of the law is of his making, would be received with indignation, and resented as a calumny: while the truth is—that, on each occasion, the rule to which a judge gives the force of law, is one which, on this very occasion, he makes out of his own head: and this—not till the act for which the man is thus dealt with has been done: while, by these same judges, if the same thing were done by the acknowledged legislature, it would be spoken of as an act of flagrant injustice, designated and reprobated, in their language, by the name of an *ex post facto* law.

All this while, we are told, that we have *rights* given to us, and we are bid to be grateful for those rights: we are told that we have *duties* prescribed to us, and we are bid to be punctual in the fulfilment of all those duties; and so (we are told) we must be, if we would save ourselves from being visited with condign punishment. Hearing this, we would *really* be grateful for these same *rights*, if we knew *what* they were, and were able to avail ourselves of them: but, to avail ourselves of rights, of which we have no knowledge, being in the nature of things impossible, we are utterly unable to learn—for what, as well as to whom, to pay the so called-for tribute of our gratitude.

As to these same *duties*, we would endeavour at least to be punctual in the fulfilment of them, if we knew but what they were; but, to be punc-

tual in the fulfilment of duties, the knowledge of which is kept concealed from us, is equally impossible. That which is but too possible, and too frequently experienced by us, is the being thus punished for not doing that which it has thus been rendered impossible for us to do.

Thus, while the rights we are bid to be grateful for are mere illusions, the punishments we are made to undergo are sad realities.

Finally, thus it is that we, who, in so far as such oppression admits of our being so, are his Majesty's dutiful and loyal subjects, are dealt with as were the children of Israel under their Egyptian task-masters.

We hear of tyrants, and those cruel ones: but, whatever we may have felt, we have never heard of any tyrant in such sort cruel, as to punish men for disobedience to laws or orders which he had kept them from the knowledge of.

We have heard much of cruelties practised by *slaveholders* upon those who are called their *slaves*. But, so far as regards the mode of treatment we thus experience,—whatever be the cruelties practised upon *them*, never have we heard this to be of the number of those cruelties. The negro, so long as he does what he is commanded to do, and abstains from doing that which he is forbidden to do —the negro—slave as he is, is safe. In this respect, his condition is an object of envy to us, and we pray that it may be ours.

We have heard not a little of the pains taken by the Honourable House, in the endeavour to put an end to those same cruelties. We cannot refuse to any such endeavour the humble tribute of our applause. But we hope we are not altogether

unreasonable in our wish, to receive from the hands of the Honourable House, the benefit of the like endeavours.

That which, for this purpose, we have need of (need we say it?) is a body of law, from the respective parts of which we may, each of us, by reading them or hearing them read, learn, and on each occasion know, what are his *rights*, and what his *duties*.

The framing of any such body of law cannot indeed but be a work of time. This is what we are fully sensible of. But the sooner it is begun, the sooner will it have been completed: and the longer the commencement of it is deferred, the more difficult will be the completion of it. Completed indeed it cannot be; and of this too we are fully sensible, otherwise than by the King and the Lords, in conjunction with your Honourable House. But, to the taking in hand this most important of all works, there is *a preparatory operation*, which, we have been assured, and verily believe, is within not only the *power*, but the *practice* of the House—of the House—acting in its single capacity, and by its sole authority. This is what we hereby pray for, and it is as follows.

1. That the House, in and by its votes, may be pleased to give invitation to all persons so disposed, to send in, each of them, a *plan* of an all-comprehensive code, followed by the text thereof; this text, either the whole of it at the same time, or in successive portions, as he may find most convenient.

2. That, for indemnifying each such contributor from the *expence of printing*, the House may be pleased to give authority to him to send in, such his work, in manuscript, to any person authorised

by the House to print its proceedings: that is to say, for the purpose, and, subject to the limitation hereinafter mentioned, under the assurance that the same will be printed, along with the other proceedings of the House, in like manner as Acts of Parliament are at present.

3. As to the persons of such contributors, we humbly insist, that, from the liberty of sending in draughts for this purpose, no person should stand excluded. No; not any person whatsoever. For suppose, for example, a foreigner to send in a draught better adapted to the purpose than any draught sent in by any of his Majesty's subjects, —we see not why his being so should debar us from the benefit of it: and assuredly we see not any reason whatever for any such apprehension, as that, by the Honourable House, the circumstance of the draughtsman's being a foreigner should ever cause a less well-adapted draught to be employed and sanctioned, in preference to a better adapted one.

4. As to the expence that might be eventually attendant on the printing of such draughts, it is no more than we are perfectly aware of. But there are two arrangements, which taken together, we cannot but rely on, as sufficient to reduce within a moderate compass, the amount of that expence.

5. One is, that it be an instruction to every contributor, that no such contributor shall receive the benefit of the accommodation thus afforded, unless, to each article or set of articles in his proposed code, the *reason*, or *set* of *reasons*, by which it was suggested, on which it is grounded, and to which it trusts for its explanation and reception, be appended.

6. The other is—that, by the Honourable House,

power be reserved to itself, by the hands of any person or persons for that purpose, thereto appointed,—to put a stop at any time, to the printing of any such draught: after which, should the impression be continued, it will be at the contributor's own expense. But that, to assist him in the faculty of thus making a virtual appeal to public opinion,—such part of his draught as shall have been already printed, shall be delivered to him, to be disposed of as he shall think fit.

As to the obligation of attaching the abovementioned *rationale*, we trust to it as a powerful *incentive*, to the framing and sending in, well-grounded draughts, as well as a powerful instrument for keeping the service unincumbered with ill-grounded and ungrounded ones. To frame a proposed code of laws, with apt reasons all along for its support, is, in our eyes, the most arduous, as well as the most useful, of all purely human tasks that the human faculties can employ themselves upon: and, proportioned to this our persuasion, is of course our desire—that, without any exception, the door should remain open to all contributors, as above: while, on the other hand, to frame proposed laws, destitute of such support, is what no hand that can give motion to a pen would feel to be out of its power: it is what not we alone, but our mothers and our grandmothers likewise, would be capable of doing, and might peradventure be disposed to do: and it is (we have sometimes heard) no altogether uncommon sight, to see hands, little better qualified, thus occupied.

To each such contribution should be attached a *name* and address: this, not for the purpose of determing the *authorship* (for that might be left to

each one's desire,) but for the purpose of *responsibility,* in the case of any inapplicable matter, sent in for the purpose of derision, by persons engaged by sinister interest in the endeavour to render the measure abortive.

As to *remuneration,* we humbly insist that none in any shape other than that of the eventual honour, of distinction and public approbation, with the benefits, which, in so many shapes, in amounts proportioned to the degrees of it, cannot but be among the fruits of such approbation,—ought to be allotted to any work so sent in: so far from promoting, any such remuneration could not but operate in counteraction to its proposed object, as above. It would operate as a notice of *exclusion,* to every man who could not regard himself as situated within the sphere of personal favour; and, the higher the reward, the greater would be the number of those who would regard themselves as thus excluded.

We beg to be believed, giving as we do our assurance to the Honourable House, that it is not to any such purpose as that of seeing so much as proposed, much less effected, any change in the hands, in which the supreme power of government is lodged, that this our humble Petition is directed: and accordingly what we not only consent to, but wish and desire is, that, out of the field of the proposed otherwise all-comprehensive code, all those parts which regard the prerogative of the King, the privileges of the several Members of the two Houses of Parliament, collectively and severally possessed, and the consideration of the hands in which the elective function is placed, be excepted; unless it be—that, for the sake of symmetry and complete-

ness, expression be, on those several subjects, given to the law *as it is*, or *is conceived to be:* it being understood that, by the expression so given to matter of this description, the draughtsman is not understood to express either approbation or disapprobation, in relation to any part of it.

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